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Supreme Court, U.S.
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No. 00-347

IN THE

Supreme Court of the United States

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Petitioners,

v.

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

VOLUME III OF V
APPENDICES CS TO DS

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TABLE OF CONTENTS FOR JOINT APPENDIX
("J. App.")

Page

VOLUME III

Appendix CS Excerpt from Direct Examination of B. Dvorak dated: March 12, 1997 (Aplt. App. 5277-5279; Transcript 3120-3122) CS-1

Appendix CT Excerpt from Direct Examination of B. Dvorak dated: March 12, 1997 (Aplt. App. 5289-5291; Transcript 3132-3134) CT-1

Appendix CU Excerpt from Direct Examination of P. Case dated: March 12, 1997 (Aplt. App. 5208-5209; Transcript 3051-3052) CU-1

Appendix CV Excerpt from Direct Examination of D. D'Ottavio dated: March 12, 1997 (Aplt. App. 5362-5367; Transcript 3205-3210) CV-1

Appendix CW Excerpt from Direct Examination of B. Dvorak dated: March 12, 1997 (Aplt. App. 5256-5269; Transcript 3099-3112) CW-1

Appendix CX Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5442-5443; Transcript 3263-3264) CX-1

Appendix CY Excerpt from Direct Examination of D. Keefe dated: March 13, 1997 (Aplt. App. 5583-5589; Transcript 3404-3410) CY-1

Page

Appendix CZ Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5448-5482; Transcript 3269-3303) CZ-1

Appendix DA Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5398-5399; Transcript 3219-3220) DA-1

Appendix DB Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5405-5434; Transcript 3226-3255) DB-1

Appendix DC Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5487-5490; Transcript 3308-3311) DC-1

Appendix DD Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5618-5626; Transcript 3439-3447) DD-1

Appendix DE Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5651-5652; Transcript 3472-3473) DE-1

Appendix DF Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5654-5656; Transcript 3475-3477) DF-1

Appendix DG Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5645-5647; Transcript 3466-3468) DG-1

		Page
Appendix DH	Excerpt from Cross-Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5668-5669; Transcript 3489-3490)	DH-1
Appendix DI	Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5629-5643; Transcript 3450-3464)	DI-1
Appendix DJ	Excerpt from Direct Examination of P. Woo dated: March 17, 1997 (Aplt. App. 5897:04-5903:06; Transcript 3718:04-3724:06)	DJ-1
Appendix DK	Excerpt from Cross-Examination of P. Woo dated: March 18, 1997 & March 19, 1997 (Aplt. App. 5953-6398; Transcript 3774-4219)	DK-1
Appendix DL	Excerpt from Direct Examination of E. Fung dated: March 20, 1997 (Aplt. App. 6581:20-6588:13; Transcript 4403:20-6588:13)	DL-1
Appendix DM	Excerpt from Direct Examination of E. Fung dated: March 20, 1997 (Aplt. App. 6564-6565; Transcript 4386-4387)	DM-1
Appendix DN	Excerpt from Direct Examination of E. Fung dated: March 20, 1997 (Aplt. App. 6513:07-6524:14; Transcript 4335:07-4346:14)	DN-1
Appendix DO	Excerpt from Direct Examination of E. Fung dated: March 21, 1997 (Aplt. App. 6782-6816; Transcript 4604-4638)	DO-1

Page

Appendix DP Excerpt from Direct Examination of E. Fung dated: March 21, 1997 (Aplt. App. 6659:05-6660:05; Transcript 4481:05-4482:05) DP-1

Appendix DQ Excerpt from Direct Examination of E. Fung dated: March 21, 1997 (Aplt. App. 6743:11-6745:04; Transcript 4565:11-4567:04) DQ-1

Appendix DR Excerpt from Direct Examination of S. Ng dated: March 25, 1997 (Aplt. App. 7116:02-7116:16; Transcript 4938:02-4938:16) DR-1

Appendix DS Excerpt from Direct Examination of S. Ng dated: March 26, 1997 (Aplt. App. 7223-7224 ; Transcript 5045-5046) DS-1

APPENDIX CS

Excerpt from Direct Examination of B. Dvorak

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5277-5279; Transcript 3120-3122)

Excerpt from Direct Examination of B. Dvorak
March 12, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 5277-5279; Transcript 3120-3122)

A Right.

Q When you do these valuations, do you ever assume the existence of a shareholder's agreement?

A No, it's irrelevant to the valuation in the way that we do it.

Q And so it would have no relevance to this valuation?

A No.

Q Now, Mr. Dvorak, let me ask you to fast forward here to the summer of 1993, taking you forward about six or seven months. Do you remember Mr. Hudon leading a banker's tour to Hong Kong?

A Yes, I was familiar with that.

Q And do you remember a financing memorandum being generated as a result of that--

A Yes.

Q --or in connection with that?

A Yes.

Q Would you look at Exhibit 1250, please?

A Okay.

Q Are you there?

A Yes.

Q All right. Now, this is the Wharf Cable financing memorandum. What is this? Tell me what this is, as best you know.

A This is a discussion of the business, a business plan, the assumptions behind the business plan.

Q Whose business plan?

A Wharf Cable's.

Q And who prepares this?

A It would be the management at Wharf Cable.

Q And was this submitted to UIH?

A To the best of my knowledge, yes.

Q And was it acceptable to UIH?

A As far as I know, it was, yes.

Q And as far as you know, was UIH ready to fund its 10 per cent based on this plan?

A That's what I was led to believe.

Q By who?

A Mr. Elsner.

Q Now, please look, if you will--I just want to look at this as exemplary so the jury gets an idea of what's in a business plan.

Look at--in the lower right corner there's handwritten numbers, and look over at handwritten 74. It says, "CNCL Consolidated Financial Projections." Do you see that?

A Yes.

Q Okay. Is this--I'm not going to ask you any detail of this. You had no role in preparing this, did you?

A No, I did not.

Q This would have been Wharf prepared this?

A That's my understanding, yes.

Q All right. But is this typical of what you see in a business plan?

A Yes.

Q Explain to us what this is, just this page. Explain to us generally what this is.

A It's assumptions that define the overall market, the number of homes there in the market, the projected subscribers, and then the rates that you would charge those subscribers throughout some period of time, starting with the beginning of the project until, you know, 10 years out, essentially.

Q All right. Now, I'm not going to ask you to go through each page of this, but I'll ask you to look at the next one, however. It says, "Income Statement." Do you see that?

A Yes.

Q And what kind of information is contained on this page, and I'll ask you whether this is typical of what you're accustomed to seeing in a business plan?

A What's included here are projected revenues for the 10-year period, projected operating expenses and cash flow that would be generated over that same period of time. And, yes, it is typical of what you'd see in a business plan.

Q And is this the kind of information you relied on when you prepared your evaluation for Smith Barney?

APPENDIX CT

Excerpt from Direct Examination of B. Dvorak

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5289-5291; Transcript 3132-3134)

Excerpt from Direct Examination of B. Dvorak

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5289-5291; Transcript 3132-3134)

A What it means is that we only value the company based on the operating projects that we had, and again, we would take their money -- we would take the money we raised in the public offering and use that to invest in these new projects.

Q Okay.

A Therefore, the value of the company would increase; therefore, the shareholders' value would go up.

Q Now, in the course of this public offering, were there road shows?

A Several.

Q What is a road show?

A A road show is where the -- your underwriters will take the company's management to various institutional groups. By that I mean mutual funds and potential buyers in a public offering. And you will give a presentation to those groups as to your company essentially. It's usually a 30-minute presentation with questions and answers.

Q Were you present during any road shows?

A Too many of them, yes.

Q Too many of them?

A Yeah.

Q Okay. Was there any discussion about the Hong Kong right in the course of the road shows?

A Yeah, in every single one.

Q And what can you recall -- you don't have tell me every time it was said, but tell me what you recall being said about Hong Kong.

MR. BAUER: Same objection, for the truth of the matter asserted, Your Honor. Hearsay.

THE COURT: It's limited to the purposes of -- that I gave you on the last instruction, and it can show state of mind and reliance. Go ahead.

THE WITNESS: I was not the one making the statements, but Mr. Elsner was. And the way he described the project is we had a right to invest 10 per cent in that project.

Q (by Mr. Chase) Look, if you will, please, at Exhibit 1284. And I believe this is in the jury book. If it's not, I think -- 1284 is a Hanifen investment analysis, do you see that, of October 15, 1993?

A Yes, I do.

Q Now, Hanifen was one of your underwriters in connection with the public offering?

A Correct.

Q And they would have attended several of these road shows?

A Yes.

Q Okay. Now, are you familiar with this Exhibit 1284, this October 15, 1993, Hanifen document?

A Yes, I am.

Q Look over, if you will, please, at Page 8, which describes Hong Kong.

A Yes.

Q Now, do you believe that that description there accurately described UIH's rights in Hong Kong at that time?" The company through UIH Asia has the option to acquire a minimum of 10 per cent of Wharf Cable." Was that your understanding?

A Yes.

Q And the valuation up there is $56.6 million; do you see that?

A Yes, I do.

Q Is that inconsistent of the valuation you had done a few months earlier?

A No.

Q Do you know whether they used your valuation or whether they did their own valuation?

A I don't know. This was completed by a research analyst at Hanifen, and typically they developed their own valuations using their own numbers based on publicly-available information. So I'm not sure exactly how he came up with that.

Q Do you disagree with the number as of that time?

A No, it was consistent with the numbers that we had come up with earlier in the year, so it was something that we didn't question.

APPENDIX CU

Excerpt from Direct Examination of P. Case

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5208-5209; Transcript 3051-3052)

Excerpt from Direct Examination of P. Case

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5208-5209; Transcript 3051-3052)

time you came to Hong Kong, the prices began to drop a bit, I believe; is that correct?

A After the negotiations, that's correct.

Q Okay. And then, you advised them they ought to be paying at least $3 million less?

A My advice was to get it as low as possible. We were able to get it--as reasonable. We were able to get it down to 6 million by the end of the negotiating sessions in October.

Q Okay. And then, they ultimately dropped down to 4.4 million based on the document that we saw?

A Based on that document, yes.

Q Okay. All right. And, let's go to another chart here. I'm going to ask you a question about this, and then I'll send you back to the witness stand. This is Exhibit 1612 and it has you up here, Paul Case, and this is a summary of time reported by UIH in connection with Wharf Cable project, June of '92 to March of '94. This says, "Paul Case, not applicable. Bill UIH on retainer." Do you record time by the hour to UIH?

A No, I'm paid on a retainer basis and I allocate a percentage of my time to various projects.

Q Okay. And, what was your retainer for UIH during that time frame?

A I was paid $10,000 a month.

Q Okay. Do you have an approximation of the amount of time that you put in on the Hong Kong project from the time that you first started working on it until the time that you finished?

A It would be somewhere between 400 and 500 hours.

Q All right. Why don't I send you back up to the witness stand, and I'd like to do one more thing.

A Okay.

Q Time permitting before the break, or otherwise just very quickly right after the break. Let's look at--I'm not sure if this is in front of you and I'm not going to--I'm just going to go through on the screen here. This is from Trial Exhibit No. 2. This talks about--these are invoices from Caspen Consulting to Mr. D'ottavio. They go through--we can go through these, but generally speaking, what is this document?

A Every month, I reported my activities to Mr. D'ottavio who managed my activities inside of UIH and I gave him a breakdown of what I had done that month, what was planned to happen in the following months, and also to let him know what percentage of my retainer should be allocated to a particular project.

Q Okay. So, for example, for the month of October 1992, you allocated 40% of your time to Hong Kong. Correct?

A That's correct.

APPENDIX CV

Excerpt from Direct Examination of D. D'Ottavio

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5362-5367; Transcript 3205-3210)

Excerpt from Direct Examination of D. D'Ottavio

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5362-5367; Transcript 3205-3210)

receiving of the signals by way of antenna on top of the buildings. So in some cases in your buildings you had two--two separate installations already for carrying so-called TV signals.

The government was contemplating--and there was some disclosure of this in the initial information that we had been given by Stephen and Emil--through the franchising procedure, the government was considering the possibility of requiring that we would--the winner of the franchise would combine these wiring systems within the building blocks. And we felt very strongly, because we went through issues like that in--similar issues like that in other parts of the world, and we really felt that it was best for a cable operator to have its own independent delivery system so that, you know, we were recommending basically to Stephen and Emil that there should be no combination of these other two networks with their network if they were to win the franchise in the apartment blocks.

Q Moving down to the bottom of the page here, it says, "Operator ownership of decoder equally important. UIH believes that we can easily justify the additional capital expenditure, suggests that we can recoup the investment by way of expiring deposits in or charging installation fee. The

key is to ensure that there are as few barriers as possible for the consumer to receive cable service." What's that about?

A Well, there's a number of issue embedded in that statement. The ownership of the decoder gets back to the same principle of the ownership of your own distribution system that I was making a point to before. Customers in cable TV always rely on the cable operator for the way in which the signal is delivered to their home. So you're always best as a cable operator to have control over the asset that delivers those signals because the consumer's always going to look to you for the solutions. So we made that--

Q I'm sorry, what do you--what do you mean by that, the consumer's always going to look to you for the solutions"?

A Well, if you were going to sell a decoder or a person would buy a decoder in a retail outlet--and we've actually seen this happen in other parts of the world, where a consumer goes in and buys a decoder, goes home and hooks it up to their so-called delivery system themselves and it doesn't work. They immediately turn around and call the cable operator up to come over and try to fix the problem. And then the cable operator's in a position where it's not even their box. And so then it becomes issues of who should service the box. So it's an uncomfortable--it's a very unfriendly thing to consumers, and you don't like to get yourself stuck into those positions.

Q All right. As of the time of this meeting in Hong Kong in June of 1992, what was your understanding as to Wharf's position on whether the boxes should be owned by--the decoders should be owned by Wharf?

A Well, we took very strong opinion on that.

Q And what was Wharf's position at the time?

A Oh, Wharf's position at the time basically was, is that their plan was to sell the decoders through retail outlets and let the customers go back to their homes and hook it up themselves to the cable system. And we again recommended that that should not be done.

Q And going down to the next sentence of this paragraph, it says, "The key is to ensure that there are as few barriers as possible for the consumer to receive cable service." What does that refer to?

A Well, it's always been our opinion that to try to keep the installation to the consumer at the time that they buy the service from you is to keep the price as low as possible. Therefore, you want to--you want to be in a position where you're--the cable operator is paying the least amount possible for the decoder, so then they can pass that savings along to the consumer, and that the cable operator as a long-term investor would be willing to, you know, amortize the cost of that decoder over 5 to 10 years as opposed to having the consumer pay it up front. And that is a barrier to entry.

Q Barrier, and "entry" means in this context what?

A Well, simple example would be that it's a lot easier to get a consumer to buy cable TV from you if you were going to charge them a $30 installation fee and $30 a month for the service that includes the cost of the converter as opposed to asking them to pay $200 for the converter up front plus the $30 installation fee and maybe a $25 a month fee for the service.

Q And so the costs are lower, then the barriers to entry are present or absent?

A Well, they're present, but it's a smaller barrier of entry. I mean, it's--the best example in the United States would be to

take a look at what happened with DirecTV, where, you know, their objective over the first six months of their operation was they took the cost of buying their equipment down from $800 to $100 or $150. And therefore the penetration of a service will be a lot higher at $150 than it would at $800.

Q All right, let's move over to the second page of this exhibit and we'll cover the topic in about less than five minutes here and then I guess His Honor will excuse us for the day. It says on the issue of the actual decoder box, "UIH believes that a SmartCard is an expensive form of security to maintain." And then, "SmartCards have also been broken in Sweden. We should check with Sky. No such thing as absolute security, recommend that we use market tactics to defeat potential thieves. Should definitely opt for Baseband scrambling system. Jerrold thought to be more flexible than SA. We can also expect to obtain written forms of guarantees from our suppliers on security issues or commitments to new product upgrades."

I think I may have bitten more off than I can chew in five minutes, so let's just take this in piece and we'll pick up here tomorrow. First of all, it says, "On the issue of the actual decoder box, UIH believes that the SmartCard is an expensive form of security to maintain." We've had some previous testimony about what SmartCards are, but if you could just talk very briefly about what a SmartCard is and why--and what UIH's position was on whether Wharf should or shouldn't use SmartCards.

A Well, SmartCard technology is basically used in the direct to home satellite business in New York, and it's an old form of security. It's a renewable security, and that's what really makes it expensive. The--if you really want to change, or if you have--if you have a feeling that somebody has broken your security system, you have to reissue the card to all of your subscribers. So this is--

Q Why is that?

A Because if you're going to change the scrambling from one source of an output from a satellite, the encryption system comes from that one source, so then therefore you have to inform all of your existing customers that you'll be sending them a new SmartCard. And the SmartCards cost anywhere from $4 to 5 each, so you can imagine if you have a million customers and you have to change that SmartCard once a year, you have a $4 or 5 purchase of the SmartCard to make that change in addition to all the administration of, you know, putting together the mailing lists, paying for postage, and shipping it out to all of your customers.

MR. WILSON: Why don't we break for the day?

THE COURT: All right. Drive safely.

(4:40 p.m. - Jury excused.)

(Whereupon, at 4:40 p.m., the hearing was adjourned, to reconvene at 9:00 a.m. on Thursday, March 13, 1997.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

March 12, 1997

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APPENDIX CW

Excerpt from Direct Examination of B. Dvorak

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5256-5269; Transcript 3099-3112)

Excerpt from Direct Examination of B. Dvorak

March 12, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5256-5269; Transcript 3099-3112)

A I did not.

Q Let me ask you to look at Exhibit 995, please. Exhibit 995 is a document entitled Smith Barney, January 28, 1993, and it's a document we've had some discussion of off and on in this matter. Could you tell us what this is, please?

A Just give me a second here.

Q Okay.

(Pause.)

A Okay, I'm sorry.

Q What is this?

A This is a document that was presented to the underwriters in January of '93. We had met with underwriters that we were talking to to take the company public later that year, and this was essentially a valuation, what we thought the company was worth. We were presenting that to the underwriters.

Q Now, it says Smith Barney. Who are the other underwriters?

A Payne Webber and Hanifen Imhoff were the other two underwriters.

Q And this is a portion of the valuation work that you did for them?

A Yes.

Q It says "Asset valuation of UIH cable interests," and it says-- there you go. That's what that is?

A Yes.

Q Now, this contains the Hong Kong valuation, this particular document; right?

A Yes.

Q Was this prepared by you?

A Yes, it was.

Q And for what purpose, please?

A In the initial discussions with the underwriters, they had asked us to present to them what we felt the company was worth from a value perspective before they started their due diligence on the company.

Q All right. And so this would just be the Hong Kong piece; is that right?

A That's correct.

Q And this is as of January, 1993?

A Correct.

Q And you prepared this?

A Yes.

Q Did you use ordinary methodology in the cable T.V. industry for valuing a cable T.V. property?

A Yes.

Q Did you do anything out of the ordinary?

A No.

Q Was there any litigation on the horizon with Wharf at the time you did this?

A No.

Q Was it in the ordinary course of business?

A Yes.

Q Let's take a look at this for a moment here. And I'm going to ask you to go line by line, but I'm going to start you with the line that says UIH ownership, 10 per cent. Do you see that? It's roughly in the middle of the page.

A Yes, I do.

Q UIH ownership, 10 per cent?

A Yes, I do.

Q And was that your understanding of UIH's right as of the time you did this valuation?

A Yes.

Q And how did you obtain that understanding?

A It was what was told to me through other management people at UIH.

Q All right, I want you to walk away from that document for a second, not literally, stay there, but turn over to Exhibit 772, if you will, and I want to just ask you a quick question about this and then we're going to go back to your valuation.

A Okay.

Q Exhibit 772 appears to be a memo of November 17, 1992 from you to Mr. D'Ottavio and others at UIH. Do you see that?

A Yes.

Q Now, if you'll look at the second page of that, please, you were the author of this memo?

A Yes.

Q It says, "Wharf has already been approached relative to granting UIH an option to invest subsequent to award of license." Do you see that?

A Yes.

Q What was your understanding as of this time of that option right?

A That we had approached Wharf and the option right had been granted.

Q All right. Now, let's go back to your valuation for a minute, please. Now, let me ask you generally, in your

business for UIH, how many of these things have you done over time?

A Hundreds.

Q On various properties?

A Hundreds.

Q Okay. And do you have a standard methodology that you use?

A Yes.

Q Why don't you describe the methodology first, and then I'm going to ask you to illustrate it by walking you through the document.

A Okay. In start-up businesses, such that we were involved in, or businesses of this sort, we would always look to the cash flow generation characteristics of the business at some point in the future, five to eight years, depending on how long it took to build the business out. We would value the company at that point in time using a multiple of cash flow, so--

Q At which point in time? At the time that you're doing the valuation?

A That's right, five to eight years out, and once we value it at that point in time, we discounted that back to the present, using some discount factor, or discount rate. So it's called a discounted cash flow method, basically.

Q Well, what would you use to determine what the cash flow for a company would be five to eight years out?

A It would be the business plan that was developed by the management of the company.

Q And did you have a business plan that you were working from when you prepared this valuation?

A Yes.

Q Do you remember what that was?

A It was the business plan that was included in the bid document when Wharf filed for the franchise application on Hong Kong.

Q All right. Now, let me ask you to walk us through this. I'm going to ask you line by line because this is something that we're going to be working with here in this case, so we may as well get started now.

A Okay.

Q The first one on the left-hand side, it says "Trailing 2000 NOI." What does that mean?

A NOI stands for net operating income, which is revenues minus operating expenses, and so that first number would be the net operating income projected for the year 2000, and that would come right off of the business plan.

Q That's not the income for just the year 2000; it's up to 2000?

A No, that's just for the year 2000.

Q Oh, just for the year 2000. Okay. And up above that--so that would be the--and I take it that's $1,938,230,000?

A Correct. And I believe that's in Hong Kong dollars.

Q Okay. Are you sure these are Hong Kong dollars and not U.S. dollars?

A I am--the first half of this chart is Hong Kong dollars.

Q Okay. Okay, fine. And then above that--okay, it says 123100, and it has 10.5 times. What does that mean?

A 10.5 was just the multiple that we were using for purposes of valuation that we would apply towards that net operating income.

Q All right. And then the 10.5 repeats itself underneath the operating income. Do you see that?

A Yes.

Q And what is that multiple? How is that arrived at, and is that something you use in the business?

A In the cable television industry, there are a range of multiples used to value cable television businesses, and that would range, depending on the property, from 10 to 12, sometimes lower, sometimes higher, depending on the growth characteristics of the business. And we, for internal purposes, were using roughly a 10 to 12 multiple. That's what we used on any of our opportunities like this.

Q So how did you choose a 10.5 for this one?

A It was me pulling a number out of the air. It was within the range, and it was 10.5.

Q All right. But that's to the low side?

A Yes.

Q All right. Then the gross value is the next line, and that looks like $20,351,415,000; is that right?

A Correct.

Q And I guess we are dealing in Hong Kong dollars here.

A Yes.

Q Okay. And what does that mean, the gross value?

A That is the net operating income, the first number shown, multiplied by that 10.5 multiple.

Q And then it says less debt, and that would be a billion dollars. And when I say a billion, I'm adding three zeros to this, because that's what you're supposed to do; right?

A Right. Correct.

Q All right. So less debt would be less a billion dollars?

A Correct.

Q And how did you arrive at that?

A That would come off of I believe the business plan as well. So if you assumed that part of the business was financed with debt, by the year 2000, the remaining debt on the business would be a billion dollars. So you would want to subtract that--once you come up with the gross value of the company, you would subtract off any debt that would burden the company at that point in time.

Q All right. And then the next line is add cash on hand $4,131,000,000?

A Correct. That is, again, a number that comes right off the business plan, and would increase the value of the company, any cash that it has in the bank is added value obviously, so you would add that to your--to the gross value.

Q And then the next line, total equity value. What is that?

A That's what the total enterprise is worth net of debt, essentially.

Q All right. So that's $23,482,000,000 Hong Kong; is that right?

A Correct.

Q Now, you have an exchange rate there.

A That's right. That is--I said earlier the top half of this page was Hong Kong dollars. What I was doing is converting those Hong Kong dollars into U. S. dollars, so that was the exchange rate at the time. So you'd take the 23.4 billion, divided by 7.74 to get the equivalent value in U. S. dollars.

Q And so the U. S. is $3,033,909,000?

A Yes.

Q All right. Now, the next two line items, homes in franchise area and project value per home; is that part of your valuation?

A No.

Q What does that mean and what is it doing here?

A It's for illustrative purposes. There were--when you look at values of cable properties, not only do you value based on a multiple of cash flow, but you can also assign a value per home or value per customer. And what I was trying to show here is that assuming a $3 billion U. S. equity value in the year 2000, on a per home basis, that was the number of homes, again, right out of the business plan that were in the Hong Kong franchise, that a value per home was $1,453.

Q So do you mean one thousand or one million or are we off of the three zeros?

A We're off of the three zeros now.

Q We're off the three zeros. So that is one thousand?

A That's right.

Q Okay. Then the next line, UIH ownership, 10 per cent, and we've talked about that. Okay?

A Correct.

Q So that gets down to a UIH distribution of $303,391,000?

A Yes.

Q And we're back to adding the three zeros?

A Yes.

Q And what does that 303 million mean?

A That would be what UIH's 10 per cent interest in this business in the year 2000 would be projected to be worth.

Q And that's undiscounted?

A Yes.

Q All right. And then the exchange rate, what does that mean?

A We had models set up that were doing different things, but since we've already converted that 303 million to U. S. dollars, then there was no need to do any additional math, essentially.

Q All right. So it stays the same?

A It stays the same.

Q And then you've got P.V. at 12 1/2 per cent. Do you see that?

A That's right.

Q All right, let me make an adjustment here, because this I'm going to want you to spend some time with.

Okay, P.V. 12 1/2 per cent, and it shows a number of 118,245,000.

A Correct.

Q Okay, what does this mean?

A We took the 303 million and using a discount rate of 12 1/2 per cent, you apply that 12 1/2 per cent to that 303 million and discount it back to the present value, which would have been the beginning of 1993 in this case.

Q All right. Now, you used the term discount rate. Tell us what that is, please.

A It can mean a lot of different things. Essentially, what it represents is assuming that you had to--or that anyone was looking at a rate of return on this asset or this investment, you would apply that discount rate to the future asset to discount it back to what it's worth to you today.

Q And you chose a 12 1/2 per cent discount rate. Can you tell me how you arrived at that?

A Right. Again, in the cable television industry, what's traditionally accepted is 10 to 15 per cent rate of return, and again, we just chose the middle at 12 1/2. That was something that we did typically in any valuation of similar projects.

Q So this one was right in the middle?

A Correct.

Q All right. And then it says less required investment, 41,895,000. Do you see that?

A Yes.

Q And what do you mean by that?

A That would be--let me, if I can, by discounting the 303 million, you come to a present value of 118,245,000. That's what the asset would be worth today. But realizing that UIH had to fund its portion of that--of the investment to get that 118 million, you have to subtract that off of that present value. And so at that time, it was estimated that UIH's investment would be 41.8 million.

Q All right. That's the money UIH was going to put into it?

A Right.

Q And how did you arrive at that number?

A Again, it was--I think we made an assumption that part of the financing requirement of that business was going to be debt financed. The rest of it would be equity financed. So that would be our 10 per cent share of the money that we had to put into the project.

Q And that brings the net present value of UIH equity, net present value as of January, '93, to 76,350,000?

A Yes.

Q All right. And then you make a success rate adjustment of 66 per cent.

A Correct.

Q What do you mean by that and why did you do that?

A There were--in terms of presenting this to the underwriters, this was one of I think six or seven projects that were in the early stages, and realizing that we were projecting the value of this business out a number of years, business plans are subject to change, assumptions change, et cetera, so it was an internal guess as to how likely the business would play out according to the business plan that we had used for valuation purposes. So, again, it was a number pulled out of the air.

Q So you discounted it, as I understand it then, you discounted your net present value by another third to get it down to 50,391,000; is that right?

A That's correct.

Q Okay. And is that sometimes in the business called a haircut?

A Right.

Q What does a haircut mean?

A It's exactly that. There are risks involved in the business and everything is not going to go according to plan. So we took a haircut to what we thought the real value was.

Q So you take a risk adjustment off in addition to your discount rate?

A Right. The other way to do it would be to increase your discount rate.

Q All right. And the two of them would achieve the--either one, you'd get to the same place?

A That's right.

Q All right, let me take you now back to the period of time a few months prior to the time of the document we just looked at, and I'll take you to the fall of 1992. Okay?

A Uh-huh.

Q Now, did you do analyses and evaluations of the Hong Kong project similar to what you've just walked through?

A Yes.

Q And did you arrive at similar numbers?

A Yes.

Q All right. Now, let me ask you to look at Exhibit 694. 694 is a document entitled Confidential Information Memorandum, United International Holdings, Inc., Dillon Read and Company, Inc., November, 1992. Do you see that?

A Yes.

Q What is that document?

A In the fall of '92, the company started a process to raise additional equity. This was prior to the effort to take the company public, so it was a private equity offering.

APPENDIX CX

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5442-5443; Transcript 3263-3264)

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5442-5443; Transcript 3263-3264)

Q And what discussions did you have with Mr. Ng regarding how he wanted to present the bid in this general time frame?

A And this is a very close period of time frame because it was the mid-september level. So I really can't recall exactly when we went from -- you know, apparently at this point in time, at 9-14, September 14th, you know, we were still under the impression that this was going to be a part of the bid document. The shareholder agreement was going to be a part of the bid document.

Q Did Mr. Ng tell you -- did you and Mr. Ng have discussions in this time frame regarding board approval?

A No, I never had discussions with Stephen about board approval.

Q And if Mr. Ng had told you that your partnership was subject to board approval, what would you have done?

MR. TULLY: Objection, it calls for speculation and leading, Your Honor.

THE COURT: Overruled.

THE WITNESS: Could you repeat the question again?

Q (by Mr. Wilson) Yes, sir. If Mr. Ng had told you that your partnership with Wharf depended on the approval of the Wharf Board, what would you have done?

A I would immediately ask him for a board resolution showing that it had already been approved.

Q Why is that?

A Because we were already in the middle of the project. We were already spending money, and from my standpoint, we were investing money in the project.

Q All right. Let's move on down here. It says that -- this is 458, Mr. Munson and Mr. D'Ottavio.

It says, "We have to keep in mind that all of this information will be given to the Wharf board and Nynex and be filed with the Hong Kong Government in the franchise application." Let me just zoom it on that.

What's that about? Well, let's focus on Nynex first. What's that about?

A Well, at this point in time, we were a partnership, so we had information on Nynex. We had requested certain other information from Nynex, which they had provided, and we had all kind of information, also, on Wharf as a partner, what their financial standings were. So from our standpoint, we really had very little public information on our company. So what we were doing was, is that we were providing this, you know, to these people. I just wanted to point out to everybody back in Denver what the purpose of it was and who would be seeing it, just as a matter of making sure that everybody knew where the disclosures were going to be.

Q Okay. And that's enough on that document, I think. Let's stick on Nynex for a minute. What was -- I'm going to focus first on kind of a task basis, and we'll shift back to

APPENDIX CY

Excerpt from Direct Examination of D. Keefe

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5583-5589; Transcript 3404-3410)

Excerpt from Direct Examination of D. Keefe

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5583-5589; Transcript 3404-3410)

lawsuit?

A I presume so.

Q Okay.

A I haven't followed it that closely.

Q All right. And, what was your position with Wharf Cable in March of 1994?

A I was a cable operations director.

Q And, in that capacity, what was your responsibility?

A I was responsible for the--effectively, the chief operating officer of the cable division. We had marketing and sales, construction, customer service, technical operations, all things that encompassed cable television at Wharf except for programming.

Q Okay. If I could ask you just to move the microphone a little bit closer to you. As I've said before, we've had different sized witnesses and it just--we want the jury to be able to hear you. Mr. Keefe, in the March 1994 time frame, what, if any, conversations did you have with Emil Fung?

A We talked about--there was a dinner that was occurring between Gene Schneider and Mark Schneider and Bill Elsner

and I was invited. So, I talked with Emil about UIH and what was going on between UIH and Wharf.

Q And, when was this dinner scheduled?

A St. Patrick's Day of that year.

Q March 17, 1994?

A 17th, right. Right.

Q Almost three years ago now?

A Right.

Q All right. And, what was your--did you learn from Mr. Fung why there was this meeting between Wharf and UIH?

A Well, yeah. UIH was coming to make a presentation to the Wharf--a board of Wharf to finalize or bring to a head the investment that they were intending to make in Wharf Cable.

Q And, were you originally scheduled to go to this dinner?

A I don't--

Q On March 17?

A I don't know. It came up at the last minute. It wasn't something that, you know, I was normally involved with and I was going along. I had known--or had met Gene Schneider once and thought he was a bit of a character and so I was, you know, kind of curious to go to the dinner to see--Stephen or Ellie had told me--who was the secretary of Stephen Ng who is our chairman--had simply mentioned the dinner, I think, and I figured it was social. I wasn't quite sure what it was about.

Q Did you learn from Mr. Fung about the dinner?

A Yeah. What Emil told me was that--I mean several things. That promises were made to UIH about the investment and--

Q Promises by whom?

A Emil had said that Stephen had made--Stephen Ng had made promises and that the investment was not going to be--it was not going to occur and that this whole event, the dinner and the board meeting and so on and so forth, was in his description had been--in his mind, I guess, in his description had been preordained; was something that was already decided, and it was not decided in favor, apparently, of UIH making the investment.

Q Mr. Fung is telling you before the board meeting on March 18, 1994 that a decision has already been made?

MR. BAUER: Objection, Your Honor; somewhat suggestive.

THE COURT: Sustained.

Q (by Mr. Wilson) What did Mr. Fung tell you, if anything, regarding the subject of a decision in this conversation that you had with him?

A What he told me was that UIH was coming to bring to a head their investment in Wharf Cable. And, he told me, as well, that there had been a decision--or it was his impression that the board was not going to approve it and this was already preordained.

Q And, did you have discussions with him about the subject of Wharf's intentions?

A With regard to what?

Q UIH's investment?

A Not specifically that I can recall. You mean about the--oh, what was going to happen with Wharf's investment--with UIH's potential investment?

Q Yes?

A That it was not going to occur.

Q And, did he tell you this before or after the board meeting?

A That was before the dinner. It was before--I'm not exactly sure when the board meeting was. The board meeting was after the dinner and the dinner was on March 17.

Q And, you mentioned earlier in your testimony that promises had been made by Stephen Ng.

A That's what I was told.

Q And, that's what Mr. Fung told you?

A That's correct.

Q When Mr. Fung told you that promises had been made by Stephen Ng regarding UIH's investment, where were you?

A You mean when I talked to Emil or--

Q Yes?

A In his office.

Q And, when you were in Mr. Emil Fung's office and he told you about these promises that had been made by Stephen Ng concerning UIH's investment, do you recall where Mr. Fung was sitting or standing?

A Not expressly, no. No.

Q Okay. And, did you ultimately go to this dinner with the UIH people?

A Oh, yes. Yeah.

Q Tell me what you can recall about the dinner?

A Well, I've spent better St. Patrick's Days. It was a--Mark and Bill were late; Gene didn't come. You know, there was sort of niceties about the project and the development of the project. Near the end of the dinner, Mark and Bill started to be very explicit with Stephen and sometimes me about what was going to happen at the board meeting and what was--you know, didn't we want--I remember Mark turning to me at one point and saying don't you want us in, don't you want us to invest? So, it was that kind of probing and pleading to try to determine what was going to happen at the board meeting the next day and there were pointed questions about support; you know, whether or not Stephen and, I guess, myself were going to support UIH's investment in Wharf Cable.

Q And, how did Mr. Ng respond to those questions?

A He was careful. He was neutral, you know. He didn't say no and he didn't say yes. He was just very careful about his answer. I think, you know, that was--it was sort of a careful and not negative, but not necessarily positive either.

Q Okay. Let's go back to the conversation that you had with Mr. Fung prior to the dinner. Mr. Fung and you discussed the subject of Wharf directors?

A Emil brought it up, yes.

Q And, what did he tell you?

A He said that there was a director that was going to--a outside director of the company that was going to take the lead on UIH's--on denying UIH the opportunity to invest.

Q Did Mr. Fung tell you what this director's concerns were?

A His business specifically?

Q No, did Mr. Fung tell you whether this director had any concerns?

A No, it was more an explanation of tactic, I think. That there was somebody that was identified that was going to take the lead, I presumed, during the board meeting when Schneider and Mark and Bill Elsner were there, you know, during the board meeting.

Q Now, when you say it was a matter of tactic, what did you mean by that?

A Well, you know, an outside director of the company was going to take the lead in not allowing UIH to make the investment at Wharf Cable.

Q Did you understand whether this outside director truly had concerns or whether this was a setup?

MR. BAUER: Objection; leading, Your Honor.

THE COURT: Sustained.

Q (by Mr. Wilson) What was your understanding about the issue of the outside director?

A My understanding was that this was preordained. That this director was somebody who was being sort of led in the direction that there wasn't really any specific concern about it, but this was possibly sort of a stocking horse.

Q It was what?

A A stocking horse.

Q What do you mean by that?

A Someone--I'm sort of caught between this conversation and what I mean. I guess, what I mean to say is that there was a director that was identified to take the lead to deliver the bad news to UIH on the investment.

Q And, this is--

A And so, this director was, in fact, being set up to take the lead to deliver the bad news to UIH or carry forward the bad news.

Q And, Mr. Fung is telling you this before the board meeting on March 18, 1994; correct?

MR. BAUER: Objection; leading, Your Honor, and asked and answered.

THE COURT: Sustained.

Q (by Mr. Wilson) When Mr. Fung told you this, when did he tell you this?

A This was all before the dinner.

APPENDIX CZ

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5448-5482; Transcript 3269-3303)

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5448-5482; Transcript 3269-3303)

Too many papers. And you've talked--you've talked previously that back in the summer of 1992, you had some conversations with vendors about decoders, and now I'd like to take you to August 17, 1992, and this is Exhibit 357, which should be the next one in your stack, and it's a letter to you from a gentleman named Ebenbach at Jerrold, with copies to Mr. Breen, Mr. Pittman and Mr. Williams. Do you have that document?

A Not yet.

Q It should be in the--

A What was the number again, 350--

Q It's 357. It's on Jerrold letterhead to you from Mr. Ebenbach. It should be just the next one in your pile, I believe.

MR. WILSON: All right. While we're fooling with the document, I apologize to the Court and the jury. We don't like to do things like this.

Why don't we talk about the--thank you, Mr. Gilmore.

Q (by Mr. Wilson) 357. All right. Let's talk about the involvement that you had concerning decoders in the Wharf Cable project in the, let's say, August through October, 1992, time frame. First of all, why don't you just tell us generally what you were doing first with Jerrold, and then we'll move over to other folks.

A Well, I think as I said before, in late July and August, I moved as quickly as possible to get a number of suppliers to engage in meetings and supply detailed technical information to the people at Wharf Cable and to the UIH people that were there in order to educate and to show the options available to everyone in starting to take a real good hard look at the design for this cable business.

Q And in the August, 1992, time frame, you've got Mr. Ebenbach sending this letter to you where he says, "Attached for your reference is the material we recently provided to Wharf Cable to clarify our development schedule and our position on a number of items, line manipulation schedule, security." And then he concludes by saying, "I hope this material will cause Wharf to give very serious consideration to some of our standard technology products." And then he says, "Incidentally, I volunteered to return to Hong Kong when, if ever, it was required to provide any further explanations and discussions."

Had you had any role in setting up previous meetings between Wharf and Jerrold?

A Yes, I did.

Q Tell us about that.

A I don't remember how many there were or how many people from Jerrold went over there, but it was a number of different meetings, and I think this letter also starts to point out where Jerrold is concerned about the commitments of making time schedules with their line manipulation box.

Q All right. Let's talk about that. At the time of this letter, did Jerrold have a line manipulation product?

A No, they did not.

Q At the time of this letter, did Scientific Atlanta have a line--did Scientific Atlanta have a line manipulation product?

A No, they did not.

Q And at this point in time, what was your understanding of Wharf's position concerning whether to use a line manipulation decoder technology or some other technology?

A I believe at this time they were still leaning very heavily towards the line manipulation project.

Q And what's that based on?

A All the--

Q What's your understanding based on, excuse me?

A Well, my position is, is that they really didn't come to terms with the line manipulation versus baseband until the bake-off. We had to set up for them with the Marconi people in January of 1993.

Q All right. I want to come to the bake-off a little bit later. Did you--but did you have conversations with Wharf's British consultants concerning their views on line--in the summer, early fall of 1992 time frame, what conversations did you have with Wharf concerning line manipulation versus baseband?

A Specifically with their consultants?

Q Yes, sir.

A Numerous conversations on it, numerous inter-reaction between engineers in Denver that worked for UIH. In some cases we even shipped the engineers over there to spend time with them reviewing technical information, the technical information that was supplied by the vendors. They just were convinced that this was the best box for Hong Kong.

Q And what was your reaction to that?

A We always tried to maintain that we were there to educate first and that they were our partners, and we had to continue to show them, you know, due respect and try to convince them that it was a wrong decision and it wouldn't work.

Q And what was the reaction of Mr. Sears and Mr. Bateson to this?

A At the beginning, it was--they would fight us. They would delay meetings with vendors. They would delay meetings with some of our people that we had sent over, but I think we got to a point through the process where they finally understood at least that video crypt was not the right answer. But as I said before, I think they were still waiting for the tests that went on in 1993 to--you know, until they were absolutely forced to make the decision that baseband was the really only technology that was available to them, so-called off the shelf and deployable in the Hong Kong project.

Q Okay. And could you explain, please, the relationship, if any, between your advice concerning the line manipulation product and the fact that neither Jerrold nor Scientific Atlanta had a line manipulation product at that time?

A Well, from our standpoint, we never--we learned hard through experience early in the industry. You never want to be involved with deploying first technology.

Q What do you mean by that?

A Well, in this case we knew they did not have the line manipulation box. We also firmly believed that neither company had a commitment to develop a line manipulation box because they were firmly committed towards digital compression. And either way, we just did not believe that a project the size of Hong Kong, all the complexities of a project that size and all of the engineering adaptations that would have to take place, even taking technology off of the shelf, they did not need on top of all of those issues a brand new technology that had never been manufactured by these people.

Q What relationship, if any, did the price of a line manipulation product have on the advice that you were giving to Wharf on this issue?

A Well, the price was one of the major issues. You know, we always felt that, you know, you should not spend any more than $100 U.S. per customer you're connecting up for a decoder or in that price area. That's what we were always used to paying.

So I mean, we believed that there was a tremendous opportunity to provide known technology through the baseband converter versus an unknown technology in line manipulation at a price that was $50 to $60 U.S. per box more.

Q Now, let's go back to baseband for a minute. Prior to October, 1992, I believe you testified recently that you had had prior experience with baseband decoders?

A That's correct.

Q And what was your view at that time as to the adequacy of the security provided by baseband decoders?

A We were--we were all convinced that it was the best two-way cable television security system available off the shelf.

Q And by off the shelf, you mean already in production?

A Well into production and well deployed, especially in the United States and certain parts of the world. I would venture to say at that period of time, there were probably 35 million, you know, addressable boxes in markets around the world, and probably 10 to 15 million of those were baseband technology boxes either at SA or GI.

Q And of the other 40 million, what would those be made up of?

A Those were just purely addressable boxes and would be referred to as an RF scrambling technology.

Q And in the United States, as of the fall of 1992 time frame, were baseband boxes used widely?

A In the fall of 1992?

Q Yes, sir.

A In the U.S. ?

Q Yes, sir.

A Oh, yes.

Q How about abroad, were baseband boxes used outside the United States?

A At that point in time, they were just starting in some of our projects. We were starting to deploy them in a place called

Malta, and we had to deploy a certain amount of them in our Ireland MMDS project.

Q Okay. I want to talk about price here for a minute. This is--should be to your left over on the side there, and it's a document that--it's actually Exhibit 251, and if you'd turn to Page 21 in that, which I may have out for you already. If not--

A I've got it.

Q All right. This is a Wharf internal document, weekly report to chief executive from November 27, 1992, concerns Wharf Cable. And then down at the bottom, it's signed Stephen Ng. And as of the date of this memo, Mr. Ng says, "RFP for set top decoder issued for return by December 2nd. Expected range U.S. $150 per unit. Up to one million units may be needed over seven years."

Do you see that?

A Yes, I do.

Q Okay. Now, I want to go into this memo in--or the $150 price in some detail in a few minutes. But first of all, I would like to talk about UIH's pricing with General Instrument Corporation.

MR. WILSON: And, Your Honor, for the same reasons we did in Mr. Breen's testimony, we would like this part of the testimony to be subject to the protective order that's in place in this case, for reasons that it has to do with General Instrument's confidential commercial information.

THE COURT: All right.

MR. WILSON: As well as UIH's.

Q (by Mr. Wilson) Now, in the fall of 1992 time frame, what understandings, if any, did UIH have with General Instrument concerning decoder pricing?

A Our pricing was set for all of the projects that we were in, and we were buying converters for Norway, Sweden, Israel, Malta, I believe Ireland, and we had prices that were very low and we also had guarantees from Jerrold that they would be the best prices of any vendor outside of the United States. And in addition to that, we were always given six month terms to make the payments for the delivery of those boxes.

Q Okay. What do you mean by six month terms?

A Well, from the time at which we received shipments into those companies, six months later, we would make the payment for those boxes.

Q With or without interest?

A No interest.

Q And were those terms available elsewhere in the industry?

A Not to our knowledge, no.

Q And so Jerrold afforded prices to UIH that were not otherwise available; correct?

A That's correct. We, you know, UIH and General Instrument had a relationship, and still have a relationship, where General Instrument knows that we're known operators and that when we get involved with a project, that they know that it will be successful most of the time.

Q Did you have discussions with the folks at General Instrument about UIH's role in the Wharf Cable project?

A Could you word that again for me, please?

Q Yes, sure. Did you have discussions with anybody at Jerrold about UIH's involvement in the Wharf Cable project?

A Oh, yes. I mean, we told them that we were going to be investors in the cable company if they were awarded the franchise.

Q And how did they respond?

A Well, they were very pleased.

Q Okay. Let's switch over to Mr. Ng for a minute. Did you have conversations with Mr. Stephen Ng regarding--well, I don't want to do that yet. I want to go to Scientific Atlanta. Did UIH also have prior pricing understandings with Scientific Atlanta?

A Yeah, we had agreed upon terms for certain of our projects to buy their products.

Q Okay. And how did the prices that UIH could get from Scientific Atlanta compare to the prices that UIH could get from Jerrold?

A The simplest explanation is that their prices were higher on a commodity basis, and their terms were 30 days from date of delivery.

Q Okay. And so the terms UIH could get from Jerrold were better than the terms UIH could get from Scientific Atlanta; correct?

A That's correct.

Q And you mentioned yesterday that you had a prior relationship with Mr. Bill Johnson from Scientific Atlanta. Do you recall that?

A Yes, I do.

Q And Mr. Bill Johnson is the president, or at that time was the president of Scientific Atlanta?

A That's correct.

Q And did you have discussions with Mr. Ng of Wharf in the fall of 1992 time frame about your relationships and UIH's relationships with Jerrold and Scientific Atlanta?

A Yes, I did.

Q And could you describe those conversations?

A We basically had conversations in regard to the types of payments that we were making, how we were making payments to these companies, the shipments that we were receiving where we were using their products, the different types of commodities that we were using, and the basic idea of the pricing that we were paying for the majority of the products. We didn't get into too many specifics too early on of what we were doing, and the reason for that is that we had those agreements firmed up with Scientific Atlanta and GI.

Q Okay. Later on in the fall of 1992, did you have other conversations with Mr. Ng regarding decoder pricing?

A Yes. I think as we got into the late September, October period of time, we were not doing very well convincing the

teams about the baseband converters, and I had had some discussions with Stephen and I had given him some ballpark numbers of what we could be expecting or what we should be expecting as far as pricing for all the major commodities that would be bought for the Hong Kong project from General Instrument and from Scientific Atlanta. And the way in which we did that was we gave them information from other projects that we had ongoing.

Q And did you tell him about--did you tell him in the fall of 1992 as to the price that you believed that he could expect for decoders?

A Yes, I specifically told him that as far as the baseband boxes were concerned, that we should expect from General Instrument somewhere in the $100 per box range, and from Scientific Atlanta about 110 to $120 price range.

Q And how did he react?

A He never believed either of those numbers. And in addition to that, I did tell him that we had extended terms of payment without instrument for General Instrument in the three, four, five month categories.

Q And that would be the 180 days no interest thing that you talked about before?

A Yeah, I don't think even at that point in time, I had quite committed to him exactly what our terms were.

Q When you told him that he could get a baseband box for $100, in that ballpark, did he tell you that he thought the price would be lower than that, higher than that, or something else?

A He didn't think it would be ever that low.

Q And what was your reaction?

A Well, I think unfortunately he was in a position where he didn't have the knowledge of the industry, and obviously he didn't have the knowledge of the prices that UIH was paying. So he lacked, you know, both data points, so unfortunately I was just clarifying to a certain extent one of his data points, what UIH was paying. So I think he found it hard to believe. In addition to that, I was still having a hard time getting Scientific Atlanta and General Instrument to, you know, ratchet down their prices on baseband as much as I would have liked at that point in time. I think we were still looking at 110, $120 price ranges, even from GI, and that was what was being put in front of Stephen and the consultants.

Q All right. And going back to Exhibit 251, Page 21 that we looked at earlier, in the November, 1992 time frame--late November, 1992, November 27th, Mr. Ng is still saying, "RFP for set top decoder issued for return by December 2nd. Expected range U.S. $150 a unit."

Do you know what that price refers to?

A No, I don't. But it's in the line manipulation box range price.

Q And so as of November, 1992, Mr. Ng is still favoring the line manipulation decoder technology over baseband; correct?

A That's correct.

Q And he's--

A And his consultants were also.

Q And he's expecting to pay $150 a box?

A That's correct.

Q All right. Let's move, I want to show you a document that the defendants used in Mr. Ebenbach's deposition--or I keep saying deposition--his trial testimony, and this is Exhibit 647. This is a letter to Mr. Ebenbach--Mr. Breen's trial testimony, excuse me--to Mr. Ebenbach from Mr. Ng dated October 23, 1992, and this is Exhibit 647. And then down at the bottom of the letter, we see that Mr. Ng copies in Mr. Sears at Wharf Cable, Mr. Bill Pittman at Wharf Cable, and BCCs, blind carbon copies you; correct?

A That's correct.

Q Now, at this time, October 23, 1992, who was Mr. Pittman's employer?

A United International Holding.

Q And why is--and what role is he performing in connection with the Wharf Cable project at this time?

A I believe the term was acting chief operating officer of Wharf Cable.

Q Okay. And during this fall, 1992 time frame, did Mr. Ng send you other correspondence concerning his dealings with the decoder manufacturers?

A Yes, he did.

Q Okay. And what was your understanding as to why he was doing that?

A Stephen expected me personally to take the lead on the decoder issue with both Scientific Atlanta and Jerrold. And in

addition to that, and I can't recall the time frame, I tried to take a position with both Scientific Atlanta and General Instrument that we would want them to bid on a package basis for the entire project for cable T. V. in Hong Kong. And what that means is that the RFP would go out to them asking not only for decoder pricing quote, but also for all of the line equipment, headend equipment that they were capable of supplying.

Q Now, you said a couple of minutes ago that Mr. Ng expected you to take the lead on these issues. Did you have discussions with him about that?

A Numerous discussions about that. He relied very heavily on me in these regards.

Q All right, let's move on to another exhibit, which should be the next one in your pile, and it's 769, a fax from Mr. Hart to Mr. Burke. We're going to go to the third page of that exhibit, which says--has Scientific Atlanta up here in the top left-hand part of the document, it says, "United International Holdings, Friday, November 13, 1992. Meeting Agenda. Attendees: David D'Ottavio, COO, and Nick Ciaravino of NYNEX." What's this meeting about?

A This was a meeting where we were trying, and continually pushing, to get Scientific Atlanta to come around to the package concept of bidding. Bill Johnson was taking the position with Stephen and myself that he had already won all of the line equipment purchases for the cable system, and of course Stephen didn't agree with him on that, and I didn't agree with him on that either.

And in addition to that point, at this point in time, too, UIH was not doing a lot of business with Scientific Atlanta, although NYNEX out of their England operation was doing a

lot of business with them. And that was one of the reasons why I invited Nick to come along with me.

The third reason for the meeting, as you can see in the rest of the agenda, was to--for me to get updated and for Nick to get updated on product technology in all regards, not only just converters, but also other things they were working on.

Q Now, was Mr. Ciaravino a cable guy?

A No, he wasn't.

Q And you said later you did have conversations with a NYNEX guy who was a cable guy, and I believe you said that was Mr. Merring-Smith?

A That's correct.

Q And what conversations did you have with Mr. Merring-Smith?

A As I said before, I believe it was just a one day short visit to Hong Kong. He had been asked by NYNEX headquarters in White Plains to come over and take a look at the business plans, where they were, and to talk to people and to get to know the--what's going on within the operation, and he basically gave me some of his honest opinions about where he thought we were in the process.

Q And what did he tell you?

A He was somewhat negative, and I think the most concerning thing to him was the lack of influence by the partners on Wharf in changing some of the aspects of the business plan, not only on the converter issue, but also on the

programming issue and the cost that was still remaining within the business plan.

Q And when did these conversations take place?

A They took place at the offices at Wharf that they were temporarily using at that time.

Q I'm sorry. When did those conversations take place?

A I can't recall, but I know he did--he wrote a report about it at a later date after the meeting we had.

Q Would this be in 1992, 1993?

A It was in 1992, late '92 sometime.

Q Okay. And then shortly after this conversation that you had with Mr. Merring-Smith, NYNEX withdrew; right?

A Well, we found out about that in the first quarter of '93.

Q Okay. I want to move on to another document. It should be the next one in your stack. This is a memo from Mr. Sears to Mr. Ng, and it's December 7, 1992.

A Could you give me an exhibit number, please?

Q I'm sorry. I apologize. 827. Also as a--yeah, 827. It should be the next one. It's not? Well, I apologize again.

I'll tell you what, I'll put it up on the screen. I'm just going to ask you about one sentence of this, and then we'll kind of use this as a springboard for some other stuff. It says, "Subject: Set top decoders. I was told this morning that on the advice of UIH, a decision had been made to utilize the Jerrold

baseband decoder on the Wharf Cable network." And in the December, 1992 time frame, what was your understanding of the British consultants' position on baseband decoders?

A I believe very firmly, as I stated before, that the decision by the consultants didn't change until January of 1993, that they fully supported line manipulation.

Q And at this point in time, were you still having conversations with Mr. Ng about the subject of the use of baseband as opposed to line manipulation?

A It was a very frequent occurrence of having that discussion with him and with the consultants.

Q Okay. And Mr. Sears says, "Such a decision would have very serious implications on the project," you know, goes on and talks about various things.

What was your reaction--what was your belief as to whether the baseband decoder technology was good or bad for the project?

A We all felt from UIH that it was the only decision that could be made.

Q Why is that?

A The size of the project, the complexities of it, and it was the best known technology available in the marketplace anywhere in the world.

Q And what impact, if any, did price have?

A It had a major impact.

Q Tell us about that.

A I think that the numbers speak for themselves. The business plan was at $160 U.S. per box for the line manipulation box, whatever line manipulation box they were going to choose, and I think we met our goal in negotiating the price below--it ended up below $100 per box for the baseband box.

Q All right, I'd like to move to the subject of the price negotiations now. First of all, I'll show you a document which should be on the left-hand pile over there, and this is a letter from Mr. Yu of Wharf to Mr. Ebenbach, with a handwritten note from Mr. Ng. And this is in the jury book, it's 848. I believe it's in the jury book, Mr. Chase. Do you have that?

A Yes, I do.

Q And Mr. Ng writes, "Please plan a visit to UK to negotiate face to face. I will ask Dave D'Ottavio to join you to apply the pressure." Do you see that?

A Yes, I do.

Q What pressure could you apply that Wharf couldn't?

A Well, I think first of all to get--and I believe this was also sent to Scientific Atlanta--to get two equipment manufacturers, not knowing that they were going to get the business, to devote the time and the energy and the money and move people and equipment from the United States to do this bake-off in England was a major accomplishment. And the reason for that is is that both companies at this point in time just didn't really feel like they were being treated fairly. They were looking for a decision. They felt that they had provided enough information, and that--and I did, too, I agreed with that. I

thought that we had run them around enough, which I always enjoy doing, but I really believed we had run them around enough, and we need to move on the project. I did not believe we needed to have this competition. We approached it from the other direction; that we should have gotten them a little bit closer on pricing, and then choose one, and then start the final negotiations on pricing and terms, and then move to this stage of testing and applied engineering techniques, and also to focus purely on just the baseband converter when you get to that point.

Q All right. You mentioned this bake-off several times now and I want to get to that. Tell us about what that was.

A I believe that it was Melvyn Sears way of slowing down this issue and putting off the decision, because--and I also believe that there were a couple delays in the chosen dates for these--this test to occur.

Q Okay, first of all, what's the bake-off, what is it?

A It's a term that I use to, you know, bringing two competitors in to prove that their cake is better than the other guy's cake.

Q Okay. Their product?

A Yes.

Q All right. And was there testing of the line manipulation decoder product at this--around this point in time?

A The way I understood it, both boxes for both vendors were tested through the Marconi process.

Q And what role, if any, did you have in arranging for those tests?

A I owed a lot of favors getting these two companies to commit this kind of resource. Again, it was a tremendous amount of effort on their part. And you have to keep in mind both companies had been through this process with Wharf even back through the original process when they had lost the--had gained the franchise, the company never got up and running, so, you know, some of the companies and vendors that we were dealing with had been dealing with the Wharf people and the consultants for two to four years.

Q And this would be--you're speaking of HKCC?

A That's correct.

Q Okay. Let's move on to the London negotiations. This would have been in what period of time, please?

A I believe it was mid January.

Q Of what year?

A 1993.

Q All right. Why don't you set the scene for us. Where were you and tell us what happened.

A The way Stephen wanted to handle it, and I finally agreed with him, was that he wanted to continue this bake-off concept through the negotiation process. So we had the results of the engineering studies and tests that went on, but he wanted to continue that through the negotiations by holding simultaneous negotiations with both vendors in the same hotel. And what we did was we'd bring each one of them in for 15 minutes, send

them out of the room, bring in the other vendor, keep them for 15 minutes, send them out of the room, and bring in the other vendor. That went on for the whole day.

Q What role did you--what role did Mr. Ng play in the negotiations?

A He was an active participant.

Q What role did Mr. David--was Mr. David Keefe there?

A He was. I believe that was his second or third day of work.

Q Okay. What role, if any, did he play in the negotiations?

A He was a participant.

Q What role, if any, did a guy named Simon Yu play in the negotiations?

A To my knowledge, nothing.

Q Was there anybody else there on behalf of UIH?

A Just myself.

Q Was Mr. Williams there?

A I don't believe he was in the negotiations for any substantial period of time.

Q Okay. What role did you play in the negotiations? This time, it's you, Mr. David D'Ottavio, not Simon Yu.

A I was a very active participant.

Q All right. Tell me about what you did.

A Well, I tried to speed the process along. And when--I've never conducted anything like this before, so this was a new experience for me.

Q Anything like this, meaning what?

A This simultaneous negotiation.

Q Okay.

A It was--my purpose, again, was just as in the engineering test, was to choose one vendor. Don't get rid of the other vendor, but choose one vendor that was the closest in pricing that you wanted and the technical capabilities, and spend your time and effort negotiating with them. If you couldn't get to real good terms, then you could always go back with the second vendor.

Q All right, prior to this session in January, 1993, approximately how many decoder contracts had you been involved in negotiating?

A A huge amount. I really couldn't give you the number.

Q More than ten?

A Oh, yes, well in excess of ten.

Q Okay. More than 20?

A Yes.

Q More than 50?

A That's probably getting closer to the number I would estimate.

Q All right. Prior to these January, 1993 sessions, what was your understanding as to how many decoder contracts Mr. Ng had been involved in negotiating prior to this session?

A To my knowledge, none.

Q Okay. Approximately--at the time of the negotiations, where did you stand as between baseband boxes and line manipulation boxes?

A Well, as far as the negotiation was concerned, through the majority of that day, we continued to negotiate for line manipulation with each one of them in baseband.

Q Okay.

A And then it was at the point in time where I--we took a break and I told Stephen we're just--we're not making any headway, and we know that the line manipulation is not going to work sufficiently. Let's break off and make sure that we get both vendors to start just concentrating on negotiations for the baseband.

Q Now, why do you say you know that the line manipulation box is not going to work sufficiently?

A We had enough preliminary information at that time, again, and this is I would say the fourth or fifth time now, that it had been confirmed that there were going to be some problems in deploying line manipulation, even if these vendors were able to produce it in time.

Q Was the line manipulation product demonstrated at these tests?

A It was tested, yes.

Q And how did it do?

A It basically worked. It did not work as well as the baseband boxes.

Q Okay. And going back to the negotiations then, there came a point in time where line manipulation was off the table and you focused on baseband; correct?

A That's correct.

Q At the end of the negotiations, do you recall approximately where Jerrold was on price?

A I believe it was in the hundred category, or above the $100 per box for their baseband box.

Q Okay. Around $100?

A Yes.

Q Where were they on financing terms?

A Oh, they had totally come around to the six month financing terms at that point in time.

Q The six month, no interest financing?

A No interest financing, yes.

Q And that's the financing that UIH had been previously given by Jerrold; correct?

A That's correct.

Q And the $100 box price is where you told Mr. Ng the prices would end up; right?

A That's correct.

Q And at the time of the conclusion of the negotiations in England, where did Jerrold stand vis-a-vis Scientific Atlanta?

A I'm sorry, I don't understand.

Q I mean, was Scientific Atlanta still in the competitor or were they eliminated or something else?

A Oh, at the end of this period?

Q Yes, sir.

A The--I remember it as being that Scientific Atlanta was told politely that GI had been chosen by Wharf to work with and try to come to final terms. But I believe that Scientific Atlanta really knew that they were out.

Q Okay. And did your role in the negotiations cease as of these meetings in London, or did they continue after that?

A No, they continued after that.

Q All right, let's go to another exhibit. It should be in the pile in front of you on the left there. This is Exhibit 1021. This is a letter from Ed Ebenbach to Simon Yu dated 4 February '93, and it says, "Simon. Here's the sidebar exclusivity letter draft

that I understand has been agreed between Dave D. , Stephen and us. I will have Clause 18 removed from the draft. Talk to you later. Regards, Ed."

Do you see that?

A Yes.

Q Okay. Then going over here, you've got a February 3, 1993 letter to Mr. Ng that says, "This agreement will serve as a side letter to the agreement for the supply of the equipment." And then it's signed by Mr. Krisbergh with a copy to you, Mr. Breen, Mr. Light and Mr. Ebenbach.

Could you tell us what this letter, sidebar exclusivity letter pertains to?

A It was one of the two if you could call them major issues that were left after the London negotiations. This one regarding a transition path, you know, of technology, as technology became available of getting from the baseband box to the next box, and that was one aspect of it that we felt that we would want to move the company towards a digital box whenever it was readily available and in use someplace. We would not be the first people to use it.

And in addition to that, the larger issues was that there were issues still within the government regulatory environment that led us to feel that there was a possibility that the major competitor to this cable company, who was actually up and running at this point in time, was the satellite delivery system, that they could be given the right through the franchising to deliver their programming over our cable system, and be allowed to sell their own decoder box to people that would hook it up to the end of our cable system.

So on a security basis, we were very concerned that the security that we were purchasing from General Instrument, there were certain rights and obligations that they'd have to make to us that they could not sell that to someone else that was going to hook it up to our cable system. And this is what this is referring to.

Q And what role did you have in negotiating this sidebar exclusivity letter?

A It was my idea and Mark Schneider's idea that we do this.

Q And what was Mr. Ng's reaction to your idea?

A He had a hard time understanding it at first, and then I think through some lengthy discussions, we got him around to understanding it and I think that's why this one drew out so long, you know, even after the negotiations in London.

Q All right.

A He was still focusing more on just price.

Q Okay. And let's go back to--we'll go back to another exhibit, which is 989. This is a memo to you from Mr. Ng dated January 17th. It says, "You should have received a copy of the attached fax from Jerrold. It does not look like what we want. If my interpretation is correct, can you please hit them again real hard and keep me informed. We need to resolve this this week."

Is it your understanding that pertains to the exclusivity issue?

A Yes, it did.

Q And did you hit them again real hard?

A Yes, I always hit GI very hard.

Q Not literally I hope.

A No. No. And I did my best to come up with some new language, working it out directly with Hal Krisbergh at that time.

Q And Hal Krisbergh, again, was the president of GI; right?

A That's correct.

Q Let's move on to Exhibit 1117, which should be in your pile there. Oh, you found it. Super.

A Yes.

Q All right. You said that there were two major open issues after the London negotiations. We've talked about the exclusivity issue. What was the other issue?

A It's hard to explain it, but the last remaining issue was something that as we were getting ready to walk out of the room at the end of the last meeting with GI, Stephen brought up an issue that had been brought up through the Scientific Atlanta bidding process, where Scientific Atlanta produced their converters in Japan and Bill Johnson at that time had put some very, very vague language into their RFP response that said something to the fact that there was certain export/import credits that could be made available to Wharf if they were to buy the Scientific Atlanta box, and certain import/export loans that could be made available to them. And it was pretty gray, but Stephen brought it up to Hal before he left. Hal says, "I don't quite understand what that's all about. We do not

manufacture our products in Japan. But I'll have my people start investigating if there's anything that would become available to Wharf, and if there is and it doesn't cost us any more money, we'll be more than willing to pass it along to you."

In subsequent discussions thereafter with Hal and with Stephen, Hal just was not going to be able to do anything like that. And, again, we were stuck down to one issue, and still not getting around to making GI a firm commitment that they were the chosen supplier and that they should start doing their application engineering studies and start manufacturing the box.

The only resolution that I could come up with was that I suggested and helped Stephen write a letter to Hal basically asking for one of two things to get off of this issue, is that since he was not able to do anything with import/export tax credits or loans, that Stephen should ask him for even more time for repayment without interest, and I believe it was like 200 days I told him to request, or to request a further reduction in the price of the box. And Hal Krisbergh then responded by accepting the second alternative, and he said, "As long as this is the last open issue, we will drop the price of the box $3.00."

Q Okay. And let's look at what I've already got here, which is 1117. This is a fax from Mr. Ng to you, Dave D'Ottavio, and dated March 22, '93. It says, "Attached letter to Hal for your information. I tried to call him, but he is travelling. If he calls you, please convey to him that we need one concession or the other to close this deal, and I can close it quickly." And then he says, "I have reviewed your--Mr. Ng says in the letter to Mr. Krisbergh dated March 22nd--"I have reviewed your latest offer with my board and have been authorized to accept it for purchase orders to be placed immediately after contract signing, provided that payment terms are extended from 180

days to 210 days, or alternatively, the discount is amended to the equivalent of U.S. $3.00 per box for the five year period." Do you see that?

A Yes, I do.

Q What role, if any, did you play in helping the drafting of that letter?

A As I just said, I suggested to Stephen that he do this.

Q And what happened next? Did Mr. Krisbergh accept one of these two proposals?

A Well, this was one time when I was ahead of Hal Krisbergh. I'd first gotten agreement from Stephen that if we got a yes to either one of those options, that this was it, that this was the last needed thing to place an order with General Instrument, and he did agree to that. And actually Hal responded the same way, and I believe the way it ended up was they reduced the price another $3.00.

Q And so that would put the price at approximately $97.00 a box?

A That's correct.

Q And is that a good price or a bad price for a baseband decoder?

A In the international market, it's a great price.

Q And--

A And the reason I'm saying that is that we also negotiated with General Instrument that there be no commitment of quantity ordered.

Q Explain that.

A Well, we didn't commit to them to buy a million boxes from them to get this low price. We committed that they would supply it to us, and the first purchase orders that went out, you know, were basically purchase orders for 200,000 to 300,000 units, and shipment dates that would be delivered off of that initial order. But it was not a firm initial order, and there was no commitment on any minimum order level.

Q What financing terms did Wharf ultimately receive from Jerrold?

A They received the 180 day.

Q No interest financing terms?

A No interest, yes.

Q And how do those terms compare elsewhere in the international market?

A As I stated before, UIH to our knowledge is the only one that gets extended terms.

Q And if we go to another exhibit here, this is 1126, it's a fax from you to Mr. Ng, a copy to Mr. Pittman, Mr. Schneider and Mr. Fries. It says, "Dear Stephen. We have had numerous conversations with Jerrold over the past two days, and I understand that you have come to terms with them. Congratulations on obtaining the best prices in the world for this equipment. Best personal regards."

At the time--at this time, was the $97.00 a box price the best prices in the world on that equipment?

A To the best of my knowledge.

Q And how did you feel about your role in getting that price for Wharf?

A In this regard specifically, just as all of the work that I did and UIH team did, it was some of the best work UIH had ever done through a project.

Q And if Mr. Ng had told you in the spring of 1993 that UIH didn't have a right to invest in the Hong Kong project, what would you have done in connection with decoder negotiations?

A Well, in the spring of '93, they were almost completed at that point in time.

Q Well, let's go back to the winter of '93 and the time of the London meetings, if Mr. Ng had told you at that time UIH didn't have a right to invest, what would you have done with respect to those negotiations?

A Well, if he'd have told me that, I would have stopped all work that UIH was doing until I got clarification from him.

Q Including the decoder negotiations?

A Including that, yes.

Q I want to turn to another topic, which is recruiting. And we've talked about that a little bit before. This is 841. This is from you to Mr. Ng. "I spoke with David Keefe after he met with Gene Schneider, Bill Elsner and Bernie Dvorak. We all feel that he is a good candidate for the chief operating officer

position in Hong Kong. Please send me the dates that you would be available in December to see if we can get him over to visit with you. Best personal regards."

APPENDIX DA

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5398-5399; Transcript 3219-3220)

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5398-5399; Transcript 3219-3220)

such as Sky T. V., Anelia, UK Use it, Nethold, which is out of the Netherlands, and also distributes into Sweden and Norway.

Q Okay. Did you express a view at this June, 1992, meeting about video crypt?

A I expressed a view that we strongly recommended that they not use that type of a box, that it was a one-way box. It was too expensive. It was too expensive to administer after you purchased it, and it did not give you the flexibility in the future of what you were going to do for new products for the cable system.

Q Okay. So let's focus on those points one at a time. First of all, it's a one-way box. That's what you discussed previously?

A Correct.

Q Then you talked about--you said it was too expensive. What is your recollection as to how much this box cost as of the June, 1992, time frame?

A Well, in the plans that we had reviewed, I believe it was somewhere in the 150 to 160 U.S. dollar range.

Q And that would be plans of Wharf Cable?

A That's correct.

Q And what, if any, discussions did you have with Mr. Ng concerning his view on the appropriateness of paying that much for a box?

A He felt that that was a very reasonable cost and that he was being assured by his consultants that it was a good box, it was a good security system, and that they had been given good prices.

Q Now, by his consultants, to whom are you referring?

A Melvyn Sears and Frank--and I can't recall his last name.

Q Bateson?

A Bateson, yes.

Q Okay. And Mr. Bateson and Mr. Webb had expressed a view to Mr. Ng that video crypt was a good box, correct?

A I would say Mr. Sears and Mr. Bateson. I don't recall Mr. Webb taking a position on it.

Q Oh, I'm sorry, I apologize. If I said Mr. Webb, I misspoke.

And so at the time of this meeting, video crypt is still being preferred, correct?

A That's correct.

Q All right. Now, you mentioned some other disadvantages of the video crypt box in your view, and why don't you just detail those a bit more.

A The concept of delivering video programming from a satellite versus over wires, or even on an MMDS system, which

is wireless also--and keep in mind that our recommendation was, is that they should use the MMDS wireless system as an entry point into the market, and it should have been just a

APPENDIX DB

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5405-5434; Transcript 3226-3255)

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5405-5434; Transcript 3226-3255)

we had a meeting somewhere in the May period of time at a National Cable Television show with Stephen and Emil where we had ongoing discussions with them about becoming their partners and what they were doing in this project. At the same time we also knew that they were talking to other cable operators at the cable show about them coming into the Hong Kong project. It was our general understanding, though, that most of those other cable operators were not interested in joining them in the project.

So Stephen invited us in June and had supplied information to us beforehand so we had a chance to review, you know, business plans, not in as much detail as we would have liked, but some of their engineering information. And what we wanted to do was actually go over and to meet with the people that were working with him, spend a little bit more time with Stephen, talk about the business, and then wrap it up in one day what our general feelings were, you know, between Mark, Mike, myself and the staff people that had taken a look at the information beforehand.

Q Okay. And why did you understand--what was your understanding as to why Mr. Ng invited you to come to Hong Kong?

A I believe that he really wanted us as partners.

Q All right. And did UIH leave that meeting considering Mr.--considering the partnership question?

A We left it on a verbal basis with Stephen that we were--after our look, we were extremely interested, that we saw a tremendous potential within the Hong Kong market, and we gave him some understanding of some of the things that we'd be looking for to become the partner, and he gave us, you know, some points to what he was looking for, you know, from a partner.

And then I believe we followed up with a written correspondence, a trip report back to him after that meeting.

Q And when, if ever, in your view did you become Wharf's partner?

A I believe it was in the August period of time.

Q Why is that?

A At that period of time we had made the commitment to him to commit our resources and to actually start spending a lot of our money on help--and we came to agreement with him that our team would be there to help his team prepare the franchise application.

Q At whose cost?

A At that--well, at that time, it was agreed upon that it was--you know, we would spend our money from our side for our cost to give that support and that that would be credited towards our equity in the future.

Q And what would happen to the money that UIH spent if UIH did not invest?

A Oh, if we didn't invest or if the company did not get the franchise, then, unfortunately, we would have lost that investment.

Q And if Wharf won the franchise and UIH decided to invest, what would have happened then?

A Well, then the money that we had spent to that point would have been credited towards our equity on a straight-up basis.

Q What do you mean by straight up?

A Well, there's a number of ways in which you invest into companies. There's a dollar-for-dollar relationship as far as an investment into a company, or if for some reason you can come to terms with your partners where they agree to you that for every dollar that you put in, they'll give you a credit into your equity position for $1.10. It was agreed upon that we would only get a dollar-for-dollar investment opportunity.

Q Okay. And would--if you got--excuse me. If you got $1.10 credit for every dollar, that would be in what's in the industry called a promote?

A That's correct.

Q Okay. And so UIH and Wharf would be contributing to the project on a pro rata basis?

A Yes, at that time it was understood that, you know, UIH would have at least a minimum opportunity to invest in 10 per cent into the company, that NYNEX would be also an investor, and that Wharf would be the majority investor into the company.

Q All right. And did UIH send people over to Hong Kong to do--to work on the franchise application?

A Yes, we actually started on some work in late July. We started working with Scientific Atlanta and General Instrument and some of the other vendors that we had dealt with, brought them up to date on where we were headed into the project and basically told them that we wanted to have them set up some detailed meetings as far as presentations of equipment and technology for all the people over in Hong Kong, and that we wanted to get started on that as quickly as possible.

Q Explain that. Why were you doing that?

A We were doing that because it's part of dealing with a partner that doesn't have the experience. It's part of--our job is to first educate, you know, our partners about what the business is and what all the opportunities are for technology and for marketing. And we always approach, you know, new projects that way.

Q Okay. And did you have contacts with General Instrument and--let's stick with them for a minute--with General Instrument or Jerrold in the summer of 1992 regarding the Hong Kong project?

A Yes, I did.

Q Tell us about those.

A Again, it's just communications with them that we were actively involved in a project, that we were going to have a right to invest in that project, and that we had reviewed the plans to where they were. We had some concerns about those plans. I pointed out to them the detail of those concerns, and we started having them get in direct contact with people like

Melvyn Sears and Stephen to start setting up meetings where each of these companies could come over and spend more time with them, alongside with our people that we had committed to get over there in August.

Q And did these meetings occur?

A Yes, they did.

Q And that would be with both General Instrument and Scientific Atlanta?

A Yes, and other vendors, also.

Q Okay. Now, at the time that--we'll come back to that. I'm going to move forward in time to the mid-September period. What was your understanding as to when Wharf's bid application was going to be due?

A Well, we always knew it from--I believe even from June that it was going to be due in September, at the end of September. And we knew we had a very, very tight time line o accomplish that.

Q Okay. And what was supposed to happen as of the September 30th deadline?

A Well, in addition to trying to spend a little bit more time on the business plan to get a little bit closer, specific issues within the franchise application, certain information that had to be provided, we had to put that together and help them. They had done an awful lot of the work, especially on the legal side. They had done an awful lot of their work already preparing for the franchise application. They had done a lot of the work already in dealing with the regulatory, you know, environment, going to the ministries and what have you and asking questions,

making sure that they had understood how the application had to be filed. And the last issue was the actual partnership.

So we were--in August we knew that we had to have prepared a shareholder's agreement so that that could be detailed into the franchise application, also.

Q And so as of September--as of the September, 1992, time frame, the expectation was that there was going to be a shareholder's agreement submitted in connection with the bid; is that right?

A That's correct.

Q Did that happen?

A That is something that Mike Fries and Mark Schneider, you know, took responsibility for. My input into that document was done through them. I had very little contact with Stephen or Emil on those issues. My input, direct to Stephen and Emil, in most cases was more of a facilitator on those issues.

Q Okay. Was a shareholder's agreement filed with the bid, though?

A No, it wasn't.

Q Okay. And what I'd like to do is to talk about--talk about that. What discussions, if any, did you have with Wharf in the September, 1992, time frame about how the bid was going to be presented to the government?

A Well, I believe it was in mid-September. I was there on a visit, an extended visit actually, and it became obvious--Stephen had told me that we were not going to be able to conclude a shareholder agreement to be a part of the bid

process. And he went through a number of reasons with me of why that couldn't be accomplished.

Q What did he tell you?

A One reason was, is that NYNEX couldn't have a board meeting before the actual filing and did not want to make a commitment even in the franchise application at this point in time without having a board meeting, and the next board meeting was scheduled after the actual filing date. That was one reason at one time.

The other reason, which I think was the most predominant, was that Wharf had been involved with a failure of the original Hong Kong franchise that had been issued to them and to U. S. West a year and a half prior to this period of time. And Wharf being a, you know, predominant Hong Kong corporation was extremely concerned at the second time that they were going after the franchise, that they wanted to show the strongest possible application for the franchise and put that in front of the regulatory body that was going to make the decision on the awarding.

And from Stephen's concept, what he really wanted to make sure of was that Wharf was in a position where they would be shown in the franchise agreement that they would be 100 per cent owner of the company, that there would be some possibilities for partners coming in in the future. But he always wanted to be able to say to the government if they asked him that question, that Wharf would be willing to stand behind the project 100 per cent, and even if they had to fund it through equity through 100 per cent, that they were--they would make that commitment to the government.

I don't know whether he ever had to do that or whether he was even asked that question, but he wanted to be in that position.

The other thing that he had to accomplish, and this is just as important in the franchise application, was that he had the technical experience and people behind him that would help him accomplish the build--of the cable system. And he came up with the idea of a technical assistance agreement.

Q All right. Now, I want to jump back in time for a minute, and I'm going to pick up that point in a minute. Had you had previous--what conversations had you had with Mr. Ng up to this point in time about UIH's willingness to be a consultant?

A I believe I made it very clear early on in our discussions that we were not consultants and that we only got involved in projects in which we were investors.

Q And how did he respond?

A He understood that fully.

Q All right. Let's move back to the mid-September, 1990 (sic) time--mid-September, 1992, time frame. He says to you essentially that he doesn't want you listed as a shareholder on the franchise application anymore, right?

A That's correct.

Q And how did you respond?

A I was very concerned.

Q Why is that?

A Well, I think that it was very late in the game to have such a major strategic change, including the issue with NYNEX. I thought that that was something that should have been taken care of, you know, before that. I believe this was mid-september, maybe the 15th, 16th, 17th, and I just didn't understand why we had waited so long to get to this point.

And I told him--you know, I said, "Listen, we're"--" from our perspective, we're already investing into this company, you know, through our time, our effort and the money that we're spending from UIH, and that I could understand the concept of the TCA, but I really wanted assurances from him, and he'd have to work it out with Mike that in no way did that--

Q Mike is Mr. Fries?

A Mike Fries. That in no way--I wanted him to understand that that would not replace any agreements that we had had up until that point in time, and that we were very cautious, also, about the use of United International Holdings in the franchise application, and that, you know, if we--you know, we wouldn't want to be put in the position where our name was being used or being misconstrued by the regulatory authorities in Hong Kong.

Q And how did Mr. Ng respond to what you told him?

A Oh, he assured me that it was--this was the best way to go, and he apologized about it being late in the game, and that he felt that on legal advice, that there was no way that there was any misrepresentations, and again, that we were all there after the franchise, and this would be the best way to get at it with where we were in our timing. And he reminded me politely that some information that he had requested from UIH he had not yet received. And so I immediately tried facilitating that information to get to him as quickly as possible.

Q Okay. Well, we'll go ahead and talk about that now. I happen to have these two documents here. Have you seen these before? This is--it should be in your--I hope it's in your pile. Let me put it this way: It's 451.

A No, it's--no, it's not.

Q I tell you what, let me--I'm going to send for help here, and I'm going to move on to something else.

A Sorry, I can't read it off the screen.

Q Yeah, I realize that.

MR. WILSON: Could you get me 451 and 458? All right.

Q (by Mr. Wilson) We'll--my apologies, Mr. D'Ottavio. Let's move back to something.

Okay. So you've had these conversations with Mr. Ng about this changing in the filing strategy. What, if anything, did he tell--what, if any, discussions did you have with him about the parties' intentions concerning the TCA?

MR. TULLY: Your Honor, I hate to interrupt, but it's like we're again talking about leading.

THE COURT: Sustained.

Q (by Mr. Wilson) What, if any, discussions did you have regarding the impact of the TCA?

A Well, I mean impact is a number of different directions. I mean, the main concern was the impact with the government, and that everything was being properly displayed and

everything was being properly divulged to them as far as how the franchise application was being filed.

I think that from our perspective, you know, it was okay to use something like that, but we--you know, I always looked for certain--you know, assurances from Stephen that this was something that would basically be used only for presentation purposes.

Q And how did he respond?

A He assured me that that's the only reason it was being done.

Q Now, what do you mean by presentation purposes?

A Well, in the application itself. It was there to prove that he had the experts, you know, from Telecom and from Cable T.V. behind Wharf Cable Holdings.

Q What discussions did you have with Mr. Ng, if any, about whether the TCA would ever be used for any other purpose?

MR. TULLY: Same objection, Your Honor, leading.

THE COURT: Sustained.

Q (by Mr. Wilson) Did you have any other discussions with Mr. Ng about the TCA?

A I had a number of discussions with him about the TCA, but I--again, I seem to remember that I ended up leaving, you know, unfortunately, to another country before the issue had been totally resolved, and I believe Mike or Mark came in there after me and resolved all of those issues.

Q Did you have any discussions with Mr.--what discussions did you have with Mr. Ng regarding whether--his expectation of UIH providing services under the TCA?

MR. TULLY: Leading, Your Honor.

MR. WILSON: I'll withdraw the question.

THE COURT: Thank you.

Mr. Wilson: Sorry, Your Honor.

Q (by Mr. Wilson) Did you have any--what discussions, if any, did you have regarding the subject of services under the TCA?

A The services had--basically had already been rendered to that point in time, you know, regarding what we had in our minds, and I think that it even started from the June meeting. I think that Emil Fung's letter really laid out, you know, what our--what we were trying to accomplish in the business planning cycle. So I think we were--we were confident that we had to continue doing that as far as improving the business plan and improving the design of the company of the technology, but we decided that that was something that had to be put aside. And, of course, we were running out of time to make the filing for the franchise application.

Q Okay. You talked about continuing to provide assistance to Wharf. Under what basis?

A It was under the basis that we had come to agreement on in August that we would have the minimum investment opportunity of 10 per cent, if the company was awarded the franchise, and that that would be a straight-up investment and that all of the money that we were spending at this point in

time, especially from August on, would be credited towards the equity position of 10 per cent.

Q Did you--what discussions, if any, did you have with Mr. Ng as to whether that agreement was still in place?

A As I said before, he had assured me that the TCA in no way replaced any agreements that we had up until that point in time and that we were partners.

Q All right. I'm going to move forward in time a little bit to the mid-October--well, first of all, let me just digress a minute.

I'm going to show you Deposition--or Trial Exhibit 226, which should be in your pile, and turn over to Page 739. This is an excerpt from Wharf's bid application.

A I'm sorry, I can't find that.

Q I'm sorry, 556? It should be in your pile.

A Exhibit--Exhibit 226?

Q I beg your pardon, Exhibit 556. Perhaps I misspoke. Yeah, I did misspeak.

A I don't have any 556 here.

Q Well, I screwed up again, then. Look on the screen. I'll just make this as big as I can here. It says--this is from the bid application. It says, "Although cut and rotate scrambling has proved very successful in satellite broadcasting in Europe, there remain incompatibilities with the network proposed by Wharf Cable. The line tilt and echo problems remain a hazard, particularly for two gigahertz AM MMDS. It is, therefore,

considered that the right solution for the Wharf Cable network is a system using line shuffle."

Let's put aside the line shuffle stuff, but focus on cut line and rotate scrambling and proving successful in satellite. Is that--do you understand that to refer to a particular box?

A I believe that was referring to the video crypt box.

Q And is that information consistent or different or something else than what you had been telling Mr. Ng back in the summer of 1992?

A No, I believe it was consistent with what we were telling him and what our recommendation was.

Q About video crypt?

A About video crypt, yeah.

Q All right. So let's--let's jump forward in time again to the mid-October--or, pardon me, early October, 1992, period. Now, the bid has gone in, and UIH is not--is not listed as an investor, correct?

A That's correct.

Q And did you have--hold on. All right. Hold on just a second here.

Okay. This is 569. This is in your pile. It should be--I believe this is in the jury book as well.

A I'm sorry, I don't have that.

Q Well, I just had a tab for it.

A These are only up to the 200s.

Q 569, I found it.

A Okay. I've got it.

Q Okay. All right. This is a memo from you to Mr. Ng, dated October 6, 1992, correct?

A That's correct.

Q All right. Now, and if you turn to the second page of this, it talks about agenda final, and then it has--it says "New York area," and it has some meetings on October the 6th and October the 7th of 1992, and October the 6th, there's some stuff about--there's a lunch with you and then a list of names, and then a visit to Jerrold Communications listed on October the 7th.

A That's correct.

Q Okay. I'm going to come back into the particulars of what was going on at those various meetings a little bit--in a minute, but first I'd like to talk to you about conversations that you had in this time frame with Mr. Ng concerning partnership matters. What conversations, if any, did you have, and why don't you tell us about them.

A Well, again, we were very tight in time, especially with impending wording of the license. Stephen was becoming increasingly more concerned, and I was also, that we really didn't have the people on the ground to keep the company moving forward to launching of cable service, and he kept asking me for help in finding people, doing searches for specific jobs, and for people to move to Hong Kong to join Wharf Cable.

I was a little reluctant, and I told him why I was reluctant, that--

Q What did you tell him?

A Well, I take very seriously searching for employees in the United States, at this time especially, these were all United States people, and I believe all of them had jobs--approaching people with job opportunities to move to a place like Hong Kong and move their families and give up jobs without--and also knowing that they're going to be asking for some reassurances of why am I asking them to do that.

And I kept telling Stephen that. I said, "You know, Stephen, after what we've been through in the filing, I "--

Q You're talking about the bid application filing?

A The bid application. I said, "We got that." I said, "You know, we're still not getting to the detailing of our agreements, and I'm very concerned about that. And you continue to ask me to do these things regarding vendors and now employees--or future employees, and I feel very uncomfortable personally in doing that."

Q Why is that?

A Well, I just--if I was going to--in this list here, all of these people, I actually personally searched myself, and I didn't use a head hunter or anything like that. And, of course, they did want to know what we were doing. Now, I was--I was telling them that we were going to be investors into this company if the company was awarded the franchise, but as I told Stephen, you know, we--you know, we need to get at the shareholder agreement. We need to finish that up, and that I felt that it was one key issue that had to be accomplished whenever we were

going to go to Denver, was that he had to finish and sort this out with Bill Elsner and Mark Schneider and Gene Schneider.

Q And how did he--how did Mr. Ng respond in this October 5th through 7th time frame?

A He assured me that we were partners and that he needed our support and our help, and in addition to that, I believe it was during this first lunch, he had ramped up his request of what he really needed. He obviously--

Q Explain that.

A Well, he knew--I kept pointing out to him that in doing these searches from our experience and then finding people, making them a job offer, how long it takes to get people relocated into an overseas location. And I told him it could be anywhere from two to three months from the time that they accept. And he said, well, then that would require us to have some type of an interim solution, and he had asked that he wanted some full-time employees from UIH to go over there and work full time on the project. And again, I reminded him that if he would take care of the issues that I'm pointing out to him, that that was something that we could--we could talk about, and we did have some employees full time in Asia and that we would consider that, but let's deal with the major issues. We need to get to the shareholder agreement, and we need to get after, you know, certain issues regarding not making decisions on technology and marketing techniques and a business plan.

Q When Mr. Ng--when Mr. Ng called you his partner, did you believe him?

A Yes, I did.

Q What did you understand him to mean?

A Well, to that point in time, I understood it to mean that we were going to be an investor in the company if they got the bid, and that we'd be able to invest in 10 per cent of that company, and that the money that we were spending right now was going to go against that investment.

Q And is that consistent or different than what he had been telling you back in the August time frame?

A No, it wasn't any different, no.

Q All right. Let's focus on the details of this October 5th to 7th time frame. Then I'm going to take you to October the 8th. It says here, "Lunch with Dave D'Ottavio, interviews at Omni Berkshire Plaza." That's in New York City, correct?

A That's correct.

Q And then you've got Ernest Gregory, Joel Cohen, Dolf Biel, Michael Simmons, and these are people that you identified for positions at Wharf Cable?

A That's correct.

Q And Mr. Ng interviewed those people, correct?

A He did.

Q And prior to this October 5th through 7th time frame, had you been working on the issue of recruiting for Wharf?

A I'm sorry, for what period of time?

Q I'm sorry, prior to these meetings in New York City, had you been working on the issue of recruiting for Wharf?

A Yes, I started--I would believe I started sometime in late September working on this issue.

Q And did you--did you talk to people about taking jobs at Wharf?

A Yes, I did, numerous people.

Q And when you were doing this, who was your employer?

A United International Holdings.

Q And for whose benefit were you doing this?

A I was doing it for the partnership in Hong Kong.

Q Including Wharf?

A Yes, the--

Q Including UIH?

A --our partnership in Hong Kong.

Q Okay. Now, let's move to the next thing on the agenda here. It says "10-7-1992 visit to Jerrold Communications." Did you make such a visit?

A Yes, we did.

Q And I'll show you Exhibit 570, which is a handwritten note from Mr. Ng where he says down at the bottom, "Jerrold, I am

visiting Hatborough tomorrow arranged by UIH." And this is dated October 6, 1992.

Did you--what, if any, role did you play in arranging that visit?

A I set up the meeting by contacting Hal Krisbergh.

Q And Hal Krisbergh is who?

A At that time he was president of Jerrold Communications.

Q And what, if any, prior relationship did you have with Mr. Krisbergh?

A I knew Hal for probably 10, 15 years prior to that.

Q And did you know him on a business basis or social basis or some other basis, or what?

A We were good friends, and we did a lot of business together.

Q And what, if any, relationship at that period of time did you have with Ed Breen of Jerrold?

A I had known Ed for quite sometime, maybe five or six years prior to that and had business relationships with him.

Q All right. And what happened at this meeting in--let me go back to Exhibit 570. Hatborough is where?

A Hatborough is in eastern Pennsylvania, above Philadelphia.

Q And that's where Jerrold is headquartered?

A That's correct.

Q Okay. And at this October 7, 1992, meeting, do you recall generally what happened?

A Generally, yes. I mean, it was an update of different types of technologies and where Jerrold was on them. In regard to the converter boxes, they brought us up to date on their baseband technology. We discussed a little bit about pricing during that period of time. They discussed with us their line shuffle that they were working on. They did not have it yet. They said that they would have it. They made some assurances of when they would have it available for the market. And we talked an awful lot about a digital decoder that was coming in the future.

In addition to that, there were presentations by engineers to Stephen about line equipment and headend equipment, and basically a really good explanation of what a two-way communications converter box can do for you.

Q And approximately how long did this meeting last?

A A few hours. I really don't know exactly, but it was a few hours.

Q Okay. And after this meeting in Hatborough, Pennsylvania, on October 7, 1992, what did you do?

A Stephen and I flew together to Denver for the meeting, you know, with Gene--Gene Schneider, Bill Elsner and Mark Schneider and Mike Fries and myself.

Q Okay. And there was a luncheon meeting. We go down to October the 8th.

A Yes.

Q It says, "Luncheon meeting with Stephen Ng, Gene Schneider, Mark, Bill Elsner, Dave D'Ottavio, Mike Fries, Bill Hudon, Ellen Spangler," and that was a meeting that was held in UIH's board room?

A I believe so, yes.

Q All right. Did that meeting adjourn?

A Yes, it did.

Q And what happened after that?

A Well, it basically went into a smaller meeting, and it was myself, Mike Fries, Gene, Mark and Bill Elsner.

Q Okay. And did you stay for this whole meeting or just part of that?

A I just stayed for part of the meeting, and Mike also just stayed for part of the meeting, and I believe Gene only stayed for part of the meeting.

Q Okay. And so that leaves Mr. Ng, Mr. Elsner and Mr. Mark Schneider?

A That's correct.

Q And where was that meeting held?

A That meeting was held, I believe, right outside of Bill's office at that time in a conference room.

Q What understanding--what--can you tell us what happened generally while you were in the meeting?

A Well, specifically, the meeting was set up for the purpose of getting to the problem of why we just can't finish the documentation and the shareholder agreement for the partnership. And we all felt that it was best that we should make it a very small meeting and that Bill and Mark and Stephen should conduct the discussions. So Mike and I both left the meeting.

Q Okay. And did you have--what discussions, if any, did you have with Mr. Ng after the meeting?

A After the meeting Stephen came to my office, which is right down the hall a couple doors and sat down, and he basically said that he had come to terms with Mark and Bill. And I said, "Stephen, are we partners," I said, "because from my perspective, I really do not feel like moving forward unless we are partners and that you assure me that we are partners." And he says, "No, no, no, I've come to terms with Bill and Mark. We are your partners. We need to keep moving. You've got to help me out with the interim management, and we've got to continue doing these interviews," which we even had another interview set up after that. And I said, "Fine, Stephen, if you could just wait here for a minute, and I'll be right back."

I walked--I looked for Mark and Bill. Unfortunately, they were both in each of their individual offices. I walked in, had a brief conversation with both of them, asked them if they were satisfied, and that I should keep doing what I was doing, and they both told me, yes, that they--

MR. TULLY: Your Honor, I just want to object to any hearsay.

THE COURT: All right.

MR. WILSON: Well, Your Honor, we would offer the hearsay for purposes showing our state of mind and reliance and not the truth of the matter and consistent with previous conversations we'd offer and--

THE COURT: All right. For that limited purpose, it's admissible.

Q (by Mr. Wilson) All right. So let's go back. You had--you went to--you left Mr. Ng and you went to see Mr. Mark Schneider?

A That's correct.

Q And Mr. Mark Schneider told--

A Actually, I think I went to see Bill first.

Q All right. You went to see Mr. Bill Elsner, and this was in his office?

A Correct.

Q And that office is next to the small conference room where he and Mr. Ng and Mr. Schneider had been meeting, correct?

A That's correct.

Q All right. And tell me--and Mr. Elsner told you what, again, please?

A I said, "Bill," I said, "have you come to terms with Stephen? I really want to know whether I should keep moving on in the things that I've been doing." And Bill says, "It's fine,

Dave." He said, "We've come to terms with them. Go ahead and keep helping them. You've got to keep the project moving."

Q Did he tell you what the terms were that he had come to agreement on?

A Not in any detail.

Q Okay.

A I said, "We are their partners," and he said, "Absolutely."

Q Okay. Did you have--did you then have a conversation with Mr. Mark Schneider?

A I had the same conversation and just as brief with Mark, and he assured me of the same things.

Q And do you recall the substance of what he told you?

A It was basically the same, that they had come to terms with Stephen. Stephen had agreed to the things that they needed to hear and that I should keep the project moving.

Q Okay. Did you get into any detail with Mr. Schneider about terms that had been agreed?

A No, I didn't.

Q All right. And did--what happened next? Did you go back and talk with Mr. Ng or did you--what did you do?

A Yeah, I immediately went back to Stephen and sat down, and we started discussing some ideas on the interim management. We did have some of those discussions in the

larger meeting, but we tried to defer that 'till Stephen and I had a chance to talk about it a little bit by ourselves.

So we discussed that a little bit, and then we had another interview that we had to get into, and that was -- yeah, Vincent Dolan, and he was also there interviewing with Stephen, myself, and with Gene, I believe, at that time and with Bill Elsner and Mark.

And then we went out that night with Stephen, and we basically prior to that had agreed that we would come up with a way in which that we would put Bill Pittman in on a full-time basis as acting COO, and also Blake Williams would be a full-time person to go in as an engineer, and that Steve Moss would be there some period of time. The majority of his time would be committed into the Hong Kong project, but we still had other things going on in Asia, and that we needed somebody to at least spend times in other countries there.

Q Was that acceptable to Mr. Ng?

A I think he was more than satisfied with the commitment.

Q And did UIH go forward with that commitment?

A Yes, we did.

Q And at the time that UIH went forward with that commitment, what, if any, discussions did you have with Mr. Ng regarding whether there were conditions to UIH's ability to invest?

MR. TULLY: Objection to the leading, Your Honor.

THE COURT: Sustained.

Q (by Mr. Wilson) What discussions--at the time that UIH went forward with this commitment, what discussions were there, if any, regarding conditions?

MR. TULLY: Your Honor, editing, if any, doesn't change it. It's still leading.

THE COURT: Sustained.

Q (by Mr. Wilson) What discussions did you have with Mr. Ng about conditions at any time?

MR. TULLY: Your Honor, it's still leading.

THE COURT: We've tried enough.

THE WITNESS: I'm sorry, I don't know what I'm supposed to do.

THE COURT: Just go ahead and answer. If you've got an answer, we'll listen.

THE WITNESS: Thank you, Your Honor.

I clarified one thing, to the best of my recollection, with Stephen when we decided to do this. It was that the ongoing cost--especially now, again, we're ratcheting up our cost, our commitment, and that this was--this was going to be for people like Bill Pittman going in there on a full-time basis, that this money would be required through an equity credit, through our investment into the company that was going to get the franchise.

Q (by Mr. Wilson) And what would happen to that money if UIH didn't invest?

A - Unfortunately, we would have lost it.

Q And what would have happened to that money if Wharf didn't win the franchise?

A There, again, we would have lost that money.

Q And if Wharf did win the franchise, what would happen to that money?

A That money would have gone against our 10 per cent ownership interest into the holding company.

Q All right. I'm going to move--I'm going to leave October 8, 1992, at least for a little bit, and go forward--or actually to go back in time for just a couple of minutes to Exhibit 211. I'm going to--this should be in your pile as well. If it's not, I'm going to put it on the screen. I'm just going to--in a way that I believe you can see it.

A I've got it.

Q All right. This is a Wharf Holdings Limited agenda for meeting with Stephen Ng on Monday, April 6, 1992, and in this memo Mr. Ng is talking about--or the author of this document talks about cable T.V. And then it lists project critical elements as subscriber management and billing system--or pardon me, subscriber management system, encryption system, distribution of decoders, people and premises.

Now, just in general terms, and then after the break, we'll come back to this in some more detail, first of all, do you agree or disagree or have no opinion on whether these are critical elements--each of these are critical elements for the project?

A They're all critical, but there's many more.

APPENDIX DC

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5487-5490; Transcript 3308-3311)

Excerpt from Direct Examination of D. D'Ottavio

March 13, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5487-5490; Transcript 3308-3311)

Q Why is that?

A Because I think that he knew he was not getting what he needed from his consultants. It was hard for him to do anything about that, and he only had one resource to go to for anything that he did need, and that was UIH. As we got closer and closer to operations, that's when it really started to show up. And, again, I think that that was a real smart move on Stephen's part, where he came to us and asked, putting a guy in like Bill Pittman as an acting chief operating officer, and also asked us to find all of the full-time employees for him. He knew that we had done these things before and he hadn't, and his consultants hadn't either.

Q Okay. I want to move to another topic here. I'm going to ask you to come over here and I'm going to do a couple of charts with you. Now, I just want to summarize here the impact of UIH's advice on the Wharf CATV system, and I want to focus on decoders here. We've covered some of this other stuff with Mr. Williams.

Wharf's initial plan for the decoder technology was video crypt or other line manipulation; correct?

A That's correct.

Q And UIH recommended Jerrold's baseband?

A That's correct.

Q And Wharf ultimately chose Jerrold baseband?

A Yes.

Q Wharf expected to pay we saw over $150 per decoder on this line manipulation stuff. UIH's advice was they should pay less than U.S. $100 per decoder and receive 180 day payment terms with no interest; correct?

A That's correct.

Q And that's what Wharf ultimately got; right?

A That's correct.

Q Wharf's plan was to sell the decoder; correct?

A That's right.

Q And UIH recommended rent?

A Yes.

Q Wharf ultimately went with a rental strategy?

A I really don't know.

Q Okay, fair enough. Wharf wanted to use SmartCards; correct?

A Yes.

Q UIH recommended no SmartCards?

A That's correct.

Q And Wharf ultimately opted not to use SmartCards?

A That's correct.

Q All right. I'm going to go to another chart here. This is Exhibit 1612, which is summary of time reported by UIH in connection with Wharf Cable project, June, 1992 to March, 1994, and it says Dave D'Ottavio, based on time allocated to Hong Kong on time sheets, Dave D'Ottavio, 222 hours, only reported and allocated some of the time spent on project.

Could you tell us, in your job as chief operating officer of UIH, whether you regularly--I mean, what you were doing vis-a-vis time--bad question.

In your capacity as chief operating officer of UIH, what were you doing with regard to time sheets?

A I was not doing time sheets for the Hong Kong project specifically. We had two partnerships, United International Holding, one being UCI and the other one being UII, and these were partnerships that we had owned 50 per cent of, along with partners like U.S. West and Time Warner, and the purposes of us managing those two partnerships, I had for a period of time, a short period of time, I had to keep time sheets. And what happened thereafter was that we just went to a flat fee arrangement in charging expenses into those partnerships, and then there was no need for me to keep time sheets anymore.

Q Okay. In the 1992-1993 time frame, did you spend time in Hong Kong?

A Yes, I did.

Q Do you recall approximately how many trips?

A Not off the top of my head.

Q What types of hours were you generally spending when you worked in connection with the Wharf Cable project on a weekly basis?

A That's hard to--it depended upon the week, it depended upon the trip that I was there. I put a lot of effort in. This is the first time I've ever seen this summary. 222 hours is definitely not the right number.

Q Okay. Do you have an approximation of how many hours you did spend in connection with the Hong Kong project?

A No, I wouldn't even begin to estimate it at this stage, but it definitely is not that number.

Q Do you believe it to be lower or higher?

A A lot higher.

Q Okay. Can you return to the witness stand?

A Sure.

MR. WILSON: If I could just have a moment?

(Pause.)

MR. WILSON: Mr. D'Ottavio, I have no further questions for you at this time.

THE COURT: It would probably make sense to wait till 1:15 for your cross, doesn't it?

MR. TULLY: No, Your Honor, I could do a few points in the ten minutes we have.

THE COURT: All right, go ahead.

MR. TULLY: If I may.

APPENDIX DD

Excerpt from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5618-5626; Transcript 3439-3447)

Excerpt from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5618-5626; Transcript 3439-3447)

anybody have any questions?

A Yes, I am.

Q Mr. Schneider, have long have you been in the cable television industry?

A Actually, we started thinking about and forming our first company in Casper, Wyoming in 1952.

Q All right. So, we're talking about 45 years?

A I guess I have to admit to that.

Q All right. Let me get it out of the way because this is going to be one of the hard questions. How old are you?

A I'm 70.

Q And, are you still active in the business?

A Yes, I am very much so.

Q And, do you know of anybody who is still active in the business today who has more experience in cable television than yourself?

A That's a pretty hard question. I certainly doubt it there would be many, if any. I really hadn't thought of it that way.

Q Why don't you take a few minutes and tell us about your career in cable television, and if you need some direction, let me know because it's pretty broad question. But, if you could start with Casper, Wyoming and walk us through a little bit as to what you've done in the industry and what the industry has done to you?

A Well, as I just mentioned, we started the company in Casper or formulated it in 1952, late '52. We actually commenced operations in Casper in '53. As you might imagine, in those days the industry was quite primitive as compared to what it is today. There probably weren't more than 30 or 40 systems in operation that you could really call a commercial operation. It's interesting; in Casper, there was only one television station in Denver at the time and that's what we brought into Casper which was the first television picture ever seen in the state of Wyoming. We brought it in by microwave from the summit outside of Laramie. It was old Channel 2, Dumont Network, and eight hours a day one channel, one channel; that's all we had. Those days, the cable industry was strictly a reception service.

Q What do you mean by that?

A Well, as opposed to today where we generate many, many services, sports or whatever that are unique and special to ourselves, all we did then was pick up broadcast signals, relay them to the home, and acted as an antenna and a reception service.

Q All they had was Channel 2 from Denver?

A That's it. There was one channel in in Denver.

Q Did you have to carry Nuggets games?

A I don't think there were any Nuggets then.

Q Because I would have thought that would have been the end of the industry right there, but--

A Yeah, it was interesting. You know, we think of--you hear a lot about rates in the cable industry. We charged 7.50 a month which would easily be the equivalent of $50 a day in today's dollars. $150 to hook up which would easily be 1000 for one channel eight hours a day. That's all we had. It kind of illustrates the tremendous progress in the industry. Now, you get 75 or 100 channels for 20 or 30 or 40 cents a channel compared to what we did then. It's huge, huge changes.

Q All right. So, we're back in Casper, Wyoming. If you could just generally describe what that was like and then where you went to from there?

A Well, actually, my brother started our business with me and a fellow named Bill Daniels which some of you may have heard. And, some oil men there really put up the money--we didn't have much, if any--one of whom happened to be an uncle of mine. That's how I got acquainted with Casper is I'd been up to visit him some.

Q Let me stop you for a second here. We've got a courtroom that's acoustically not perfect.

A What am I doing?

Q And, if you would--you need to speak into the microphone and maybe speak a little bit slower.

A Okay.

Q Thanks. Go ahead? You were with your brother.

A Well, anyhow, we proceeded to--we recognized that we felt this industry had a great future, particularly Daniels, my brother, and I, and we proceeded to evolve the company into other areas. Farmington, New Mexico; Rawlins; Perrington, Texas; later on many, many others as we moved along. We bought the oil people out of the business in the early '60s. I think it was January of 1960.

Q What do you mean you bought the oil people out?

A Well, they were the ones that originally put up the money in Casper, one of whom was my uncle, and being oil men, they like to get their money out and go do something else. So, we did buy them out, as well as Daniels. Daniels formulated at that time his investment banking business in the cable industry and became the largest in the industry.

Q You've mentioned Daniels a couple of times now. Can you tell us, for those of us who don't know who Daniels is, which Daniels you're talking about?

A It's Bill Daniels. As some of you may have heard, I mean, he was one of the original starting with us, an entrepreneur in the industry. He went on to be instrumental through the years that he was in the industry. He's still there.

Q Now, he's older than you, right?

A Sorry?

Q He's older than you, right?

A Bill is a little older than I am, about six years I think.

Q Okay. Go ahead?

A Well, I lost my train of thought. Anyhow, we proceeded to develop the company, obtain more properties. We brought in some new stockholders/investors to raise money. It was a private company all through the '60s. In the latter part of '68, we saw that they were beginning to open up the larger cities for franchising. We had run across a little oil company in Tulsa, Oklahoma called Livingston Oil at the time; later, LVO. As I recall it, they had about a $6 million cash flow and we saw an opportunity to combine with them. They were interested in the cable business and they wanted to combine with us. We did that, moved the headquarters from Casper to Tulsa, and went after the Tulsa franchise which we eventually got two or three years later. Actually, we took the company public, spun it out, if you will, a portion of it in 1970, and from that day on, we have been a publicly held company.

Q When you say we, are you talking about United Cable?

A Well, actually, the term "United Cable" or the name--all of these properties were part of United Cable when--let me go a little bit farther forward.

Q Sure, go ahead?

A In '74, LVO merged with Utah International and we were not a part of the merger. We then became totally an independent publicly held company, and that's when we changed the name to United Cable and three years later--that was in '74. In '77, excuse me, we moved the headquarters of the company to Denver where we are now. There was a motive in that. A great deal of the industry was in Denver; TCI and Jones and ATC and Williams, all those companies. All the publishing companies were in Denver. It was an ideal spot for anybody in this business to be. We also saw the opportunity opening up to develop franchises and get franchises in Denver itself, as well as the suburban areas. We did end up with most

of the suburban areas. Mr. Daniels beat us out, along with some other partners, in Denver itself.

We kept building the company. I might interject here that one of the things we did that's probably different than some of the other companies is we were always on the cutting edge of the technology or development of programming. We felt that the most important thing you could do is deliver maximum service in terms of quantity and quality at a fair price. And, that was really the way we approached the business and tried to conduct ourselves. And, I think it paid off. But, we were out front. We were the first company to sign a nationwide contract with HBO; the same thing with ESPN. As a matter of fact, ESPN, the first officers were in our building that we own in the suburbs of Hartford, Connecticut where we had several systems operating.

Q Did you develop any programming yourselves?

A We certainly did. We were one of the first investors in Discovery Channel. We invested in the Turner deal when he was in bad shape in the early '80s, along with several other companies. In fact, I was on the Turner board several years.

Q You'd better tell us what Turner being in bad shape--that doesn't relate to the Braves, does it?

A No, not the Braves.

Q Okay. What is Turner deal?

A Well, Ted had gotten himself in a lot of trouble when he acquired MGM in those days and really could not convert that to revenues as far as he thought. The industry put together about $500 million. We put in, as I recall, $75 million to, in effect, bail him out. As a result of that, several of us went on

the board of Turner. I was on there about eight years, I think. We helped him develop father programming. He was a great believer in the industry and has, as most of you probably know, developed a lot of programming for the industry.

Q Any other programming that you participated in?

A Well, interestingly enough, back in the '60s, I think we started up the first so-called weather channel in the industry. All it was was a camera that spun in front of some weather dials and that was the original weather channel; very primitive compared to what we have today. We tried to be first in--we had one of the first news channels, did that in Moab, Utah. We just tried to give the customer everything we could think of and as high of technical quality and as much of it as we could find.

Q What was the Discovery Channel?

A Discovery Channel, of course, probably everybody in this room knows it's one of the most popular channels on television today. You know, just as the name implies, it's more of a educational type thing presented really in an entertaining form. I think we all know what it is.

Q And, your role in the development of that?

A We were an investor. We believed in the idea and helped promote it, getting it going that way.

Q What kind of technical technological advances did you participate in in the development of the industry?

A Well, one of the main things that happened as we were going along in the middle '80s is the idea of addressability which created the opportunity for Pay-Per-View where you could have impulse response to the opportunity to buy a

program on a single program basis. You had to have the addressable converters to do that, and we certainly were one of the leading companies in that area. Out of our 1,200,000 subscribers that we had in '89 when we merged the company with United Artists, we had about 1,000,000 of those addressable converters out and had Pay-Per-View everywhere which was far, far ahead of the rest of the industry at the time.

Q Let me stop you for a second. If I ask any detailed question about converters, I'm going to get people throwing the things at me. So, I'm just going to ask you generally without getting technological on us, what is an addressable converter?

A Well, an addressable converter is--everybody knows what a set-top box looks like, I think. This is a box that through a computer controlled system in the headend, you can turn on and off a channel from the headend instantaneously. If somebody orders a program on a particular channel, you can turn it on in a matter of a second from a computer controlled headend. That created the opportunity for Pay-Per-View in the industry.

Q Okay. At the time United Cable merged into United Artists, where was United Cable in the cable industry? Where did it stand?

A I think, at that time, we were about the seventh largest company in the industry. We were on the New York Exchange. As I said, we'd been a public company since 1970, and it was quite a successful company.

APPENDIX DE

Excerpt from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5651-5652; Transcript 3472-3473)

Excerpt from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5651-5652; Transcript 3472-3473)

agreements. It can be done; is done.

Q Okay. Now, let me ask you about board approval and I'm talking at the moment about Wharf board approval. When UIH committed its resources to this project, did you believe that any further approvals were needed from Wharf for them to promise or offer you a 10% investment right?

MR. JENTES: Your Honor, I haven't objected on leading, but it seems to me that this is awfully leading and also it's not clear how he would know any of these things since he said he wasn't involved in the negotiations.

THE COURT: All right. Sustained.

MR. CHASE: I'll rephrase.

Q (by Mr. Chase) What, if any, Wharf board approval did you anticipate was required for you to have your 10% investment right?

A I was not told that any approval of that nature was needed at that time.

Q Did you, personally, when you were told of a 10% investment right, believe that there may have to be further approvals at Wharf?

A No. I felt that the principals and the officers, the senior people we were dealing with, had the power to make a deal.

Q Is that unusual?

A No, not at all.

Q And--

A It's done all the time.

Q --if Mr. Ng or somebody else had told you that further approvals were required, would you have committed the resources of your company?

A Well, I would have said, well, what are they and I would have set a deadline to get them and it would have been a very short one or we would have said, no, we're not proceeding here. If you're telling me you've got to have something else done here or approved here before we can really say we have a deal, then we would have--by the way, that happens occasionally. Somebody will say, well, I've got to go get somebody else to agree with me, board or whatever. We say get it and then we go forward.

Q Okay. So, if Mr. Ng had said I've got to do this, you would have said get it?

A You bet I would have.

Q All right. Now, let me ask you about NYNEX. You mentioned NYNEX earlier in your testimony. Were you aware that NYNEX also had an interest in this project?

A I was aware that NYNEX was looking at it. I didn't know a lot about what they were doing, but I know that they were supposedly going to be the telephone partner in the thing.

Q And, why would there be a telephone partner?

A Well, there was a possibility here of this evolving into

APPENDIX DF

Except from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5654-5656; Transcript 3475-3477)

Except from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5654-5656; Transcript 3475-3477)

Q Do you have any control over the NYNEX board of directors?

A No.

Q Okay. Is there any way to predict or was there at that time what the NYNEX board of directors would do, as far as allowing a NYNEX investment?

A Not from me. No, I wouldn't have any way of knowing what they were going to do. You might surmise they probably were interested or they wouldn't have had their people running around there.

Q Have you ever accepted a condition of your company's right to invest on some other company on which you have no control also investing?

A No.

Q Now, let me go back to your testimony about the public offering. You say you had a successful public offering in the summer of '93; is that right?

A In July of '93.

Q All right. You raised roughly how much money?

A Oh, I think, it was about 80 million then that first time, something like that.

Q And, had you before the public offering raised some more private money?

A Yes. In the spring of '93, we took in a private investor.

Q That was Apollo?

A Apollo.

Q How much did you raise there?

A It was 30 million.

Q Okay. So, by summer of '93, you had an additional--let's use round numbers--$100 million?

A Yes.

Q To your knowledge, was that adequate to fund in the Hong Kong investment to 10%?

A Oh, yes, I think it was more than adequate, yes.

Q Tell us a little bit how the funding works on an investment like that? Do you show up with a check for $40 million or $50 million or do you pay it over time? How does it work and how did you anticipate it would work in this instance?

A Well, no, you don't show up with a check all at one time. The first thing we would have done would have been converted all the money we had spent on personnel and all that into equity as a share of the first call for equity. You generally make these contributions based on capital calls, it's called. It's for a portion of the total that you eventually expect to put in and each party, depending on the percentages they own--we 10%;

them 90%--would contribute the money as you're going along and needed it.

Q All right. So, let me try an example here. So, you get to September 1993 and the project needs $10 million. How does the project raise $10 million from its two investors?

A Well, they'd put out a capital call and we'd put up $1 million and they'd put up $9 million.

Q All right. And, that's how it goes all the way through the project?

A Yes.

Q And, that's how eventually--if it's a $40 million to $50 million commitment, that's how your 40 million to 50 million eventually gets spent?

A You'd eventually get it all in that way. In the interim, you might be bringing in some debt and things like that, too.

Q Okay. And, the application of the cost of your services that you're providing to the project, did you understand that was going to count towards equity, as well?

A Yes.

Q And, is that customary?

A Very much so, yes.

Q Now, after raising that money in the summer of '93, was UIH prepared to make the investment into the Hong Kong project?

A Yes, we were.

Q Did you obtain formal board approval to invest into the project?

APPENDIX DG

Excerpt from Direct Examination of D. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5645-5647; Transcript 3466-3468)

Excerpt from Direct Examination of D. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5645-5647; Transcript 3466-3468)

as you do it today?

A Pretty much so, yes.

Q Now, with respect to Hong Kong, did you have any personal involvement in negotiating that transaction?

A No.

Q Were you aware of the transaction?

A Oh, yes.

Q How were you made aware of the transaction?

A Well, the people that were doing that, obviously, I talked to frequently--if not daily, virtually daily--and was kept apprised and aware of what was going on. But, I was not involved in direct negotiations. I did meet some of the principals of Wharf and might have even played a little golf a time or two with a couple of them. But, the real discussion of the deal and what was going on and our rights and all that was with other people.

Q In the 1992-'93 time period, what was your understanding of UIH's rights in Hong Kong?

A Well, we had a right to invest in the system.

Q And, your understanding is obtained from those in your company and from being on the board?

A Well, and the very fact I went over to Hong Kong and was introduced as a partner and I can't be a partner without investing. So, there's absolutely no doubt in my mind we had a right to invest. We were expected to invest and, by the way, we were investing because we were committing resources and people to the project at that time and we weren't going to get that back unless we converted that to equity in the company.

Q What do you mean by that?

A Well, the money we were spending on our people, part of what we had discussed is that that would be credited to our later investment in the company.

Q All right. Now, tell us a little bit about your understanding of what the company had committed in this, let's say, summer/fall '92/winter '92-'93 time period around the time of your trip to Hong Kong, basically?

A Well, the biggest single thing is we contributed several of our key people who were working diligently and really managing the business, developing the plans. We brought in vendor contracts which are very important. You know, our reputation was put on the line in the local community as, you know, we're here as this great experienced partner and that was a great contribution, I think, to the whole enterprise.

Q You mean given your name?

A Lend our name to it and our reputation.

Q Is that something you do lightly?

A We're glad to do it when we have the rights to do what we had there. Yes, that's part of what we bring to the table when we're going into a new situation.

Q Is it something you do without a right to invest?

A No.

Q Is it something you'd ever done without a right to invest?

A No.

Q Were you aware that UIH was prominently featured in the franchise application?

A Yes.

Q Is that something UIH does without a right to invest?

A No.

Q Have you ever done it without a right to invest?

A No. We never will, either.

Q Okay. Now, you mentioned before that you were aware that the agreement in this case was not immediately reduced to writing. Do you understand that?

A Yes.

Q Did you understand at the time you were committing your resources that you didn't have something written yet?

A Yes, I understood that.

Q Did you anticipate that eventually there would be a writing?

A Yes.

Q Was that an unusual situation to go ahead and commit without having it written down yet?

A No, I don't think it is. As I've explained earlier, you

APPENDIX DH

Excerpt from Cross Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5668-5669; Transcript 3489-3490)

Excerpt from Cross Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5668-5669; Transcript 3489-3490)

bid in September of 1992? You did, at least, know that, I take it?

A I don't know whether I knew it at the time, but I knew it at some point in time.

Q Okay. In any event, notwithstanding that fact that the parties didn't arrive at a shareholder's agreement, UIH nonetheless went forward and continued to supply help to Wharf on the project; isn't that correct?

A Yes. We were helping on the project during that period.

Q Did you get a report that at the end of December of 1992, the Wharf board again--excuse me, the NYNEX board again did not approve going ahead with an investment or is that again something that you just didn't get that much into the details on?

A Somewhere along in there, I had heard that NYNEX was not really that interested. It certainly in my mind had nothing to do with us.

Q Did you get a report that the people at Wharf decided at that point, namely in December of 1992, that they would defer any decision on ownership until the time they launched the cable tv enterprise?

A I don't recall hearing that specifically.

Q In light of what you've said, I take it that you have no firsthand knowledge of the asserted option agreement that is at least part of this lawsuit?

A I have knowledge of it to the extent that, you know, when Stephen Ng was in Denver in early October of '92, somewhere right along in there, that this was reaffirmed, discussed, and agreed to, shook hands, whatever--however you want to describe it. I was not in the meeting that did that, but I had it reported to me.

Q Okay. And, was it your son that reported it to you?

A It could have been him or Mr. Elsner or both.

Q But, in any event, you weren't in any of the discussions between Mr. Elsner and your son and Mr. Stephen Ng in which an option may or may not have been discussed?

A I don't think I was actually in the meeting.

Q Okay. Did you see any memorandum or notes of the meeting in which there was an indication that such an option agreement had been arrived at?

A At that time?

Q Yes?

A I don't recall.

Q Okay. Did you ever see a confirmatory letter from your son to Mr. Ng or from Mr. Elsner to Mr. Ng concerning the fact that they had arrived at this asserted option agreement in October of 1992?

A I don't recall it if I did.

Q Did you ever see a draft of an option agreement?

A No, I don't think so.

APPENDIX DI

Excerpt from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5629-5643; Transcript 3450-3464)

Excerpt from Direct Examination of G. Schneider

March 14, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5629-5643; Transcript 3450-3464)

and United International Holdings?

A Yes. We have just lived with partners. That's what we do virtually everywhere.

Q Now, when you say partners, how do you use the word? What's your understanding of a partner?

A Well, a partner is somebody that you're in business with and you're both contributing your resources to the enterprise. You take your risks together, sharing the profits and losses, whatever. But, you're trying to make a successful business by working together.

Q Is it a sharing of ownership?

A Absolutely.

Q All right. Have you heard the term in your industry "strategic partner"?

A Yes, in fact, I just used the term. Yes.

Q Okay. In your industry, what's your understanding of the meaning of the term "strategic partner"?

A Well, in the simplest of terms, a strategic partner to me is somebody that brings something to the table/to the partnership besides just money. If it's money only you're bringing, you would be called a financial partner. A strategic partner brings

expertise, contacts, good will, reputation, all the kinds of things that you develop through the years by being in the industry. And, also, a strategic partner can be somebody not in the industry, but a local partner that has a good reputation, a recognition in the community as Wharf did. You know, local contacts with the people in the regulatory positions and political positions, all that.

Q Focus for a moment on the word "partner" as it's used in strategic partner; just the word "partner". What does that mean in the industry?

A Well, I guess exactly what it says. You are a partner. You were working together. You invest together. You're trying to make a successful enterprise by working together.

Q Have you ever heard the term "strategic partner" used in the cable industry where there was not joint investment or joint ownership?

A I don't see how you could even apply the term if you didn't have joint investment and ownership.

Q All right. Let me ask you to--I'm going to show you something that we've had in this case. It's called the "Response to Jury Questions". If I might approach the witness, Your Honor, I'd like to hand him the two definitions.

THE COURT: Yes.

Q (by Mr. Chase) This is a document that I do not expect you to be familiar with because it's something that came up in this case and peculiar to the people in this room. But, I'm going to ask you something about it. If you take a look at it, you see that the Judge said to the jury, "You have asked for clarification of the term 'strategic partner'." And then, he goes

on to list two--oh, I'm sorry, thank you. You see we've got it on the screen, as well as on the piece of paper there for you. He goes on to list two possible meanings. Now, the first meaning is by a witness named Mark Schneider; do you see that?

A Yes, sir.

Q Do you know a Mark Schneider?

A Yes, I do.

Q His relationship to you?

A He's my son.

Q All right. Now, would you look at his definition of strategic partner as set out in that response to the jury question?

A I've already done that.

Q Do you agree or disagree with Mr. Mark Schneider's definition of one who is or has a right to become an owner of the business, to share in the profits and losses of the business; and second, strategic meaning the partner adds to the partnership something in addition to money, such as skill, expertise, or connections?

A Yeah, I think that's very much like what I just said. Yes, I agree with that.

Q Do you have an opinion as to whether accurately reflects the common usage in your industry of strategic partner?

A I think it does, yes.

Q All right. Now, I'd ask you to look at the next part of this where it says, "The witness, Henry Van Demark, of NYNEX defines strategic partner as"--do you see that?

A (No audible response.)

Q Now, first, let me ask you, in 1991 through '94, was NYNEX known as a company in the cable television business?

A NYNEX was known basically as a telephone company.

Q Telephone company?

A Right.

Q Okay. Now, if you'll look, please, at Mr. Van Demark's definition and I'm not going to read the whole thing because it's lengthy, but if you'd take a minute to read it? Okay. Are you finished?

A I think I am.

Q Does Mr. Van Demark's definition accurately reflect your understanding of strategic partner?

A Well, this--this looks like something one of you guys wrote. You know, it may hit some of the points of being a strategic partner, but this is pretty far afield from, you know, something you could really understand. I like the first definition.

Q Okay. Now, let me ask you this. Do you remember being in Hong Kong in October 1992?

A Yes.

Q And, do you remember giving an interview to the South China Sunday Morning Post at that time?

A I didn't know that was the name, but I did give an interview.

Q All right. I'm going to put this up on the screen. I don't even think it's necessary for you to fidget through the documents. Do you remember how it happened that you came to be giving an interview to the Hong Kong newspaper in October 1992? This is Exhibit 655.

A Well, this would have been something--we were in Hong Kong at that time obviously, and it would have been something that Stephen Ng or some of the Wharf people would have arranged.

Q All right. Now, I'm just going to quote you one paragraph from the interview of you. See that up on the screen there as soon as it stops focusing? You got it?

A Yes.

Q All right. It says, "Mr. Schneider, who described Wharf as a strategic partner, said the seven channels would feature news, sports, women, et cetera." Do you see that?

A Yes, sir.

Q And, did you refer to Wharf as your strategic partner in this article?

A Yes, I did.

Q And, what did you understand--what did you intend to be meaning by that?

A Well, as I described a while ago, a strategic partner doesn't have to pertain to just something like ourselves who brings our expertise on the industry to the party. They were a strategic partner in the sense that they had a local recognition, local organization. They were a respected company as far as I know, and they had local contacts probably regulatory-wise, politically. Those are things that are strategic to a business that you're trying to get going.

Q Did you understand that they were your partner?

A Absolutely.

Q In what sense?

A In what sense?

Q Yes?

A We were developing the enterprise together.

Q Okay. Were you co-investing?

A We were at that time, yes.

Q Okay. So, at that time, you had a right to co-invest?

A Well, we were also investing our people, our resources at that time.

Q Okay. All right. Now, from the same trip, let me show you Exhibit 600, please. I'll tell you what, I'll keep this on the screen so you don't have to fidget with this. Exhibit 600 is a letter of October 14, 1992 from Stephen Ng to Bill Elsner. Why don't you--I'll tell you what. I'm going to ask you if you

could pull it out. It will be easier and I will help you with that for a second.

MR. CHASE: If I might, Your Honor?

THE COURT: Yes.

Q (by Mr. Chase) Okay. Do you see the October 14, 1992 letter?

A Yes.

Q From Mr. Ng to Mr. Elsner. And, that refers to a trip that you and Mr. Elsner were taking to Hong Kong in mid-October 1992?

A Yes.

Q Now, let me ask you, if you will, please, look over at the second page of this document called UIH visit, October 19-22, 1992.

A The second paragraph?

Q The second page? If you could flip the page, do you see that?

A Okay.

Q It looks like kind of a schedule; do you see that?

A Uh-huh, yes.

Q Down at the bottom, it indicates it was prepared by SN. Would you understand that to be Stephen Ng?

A I believe that would be Stephen.

Q All right. Now, let's go back to the schedule a minute. I'm not going to go through all of it, but I'm going to ask you about this lunch that's on October 22, 1992. It says, "Stephen Ng will host lunch for Schneider/Elsner to introduce UIH as a strategic partner. Do you see that?

A Yes, sir.

Q And, what was your understanding of their use of introducing you as a strategic partner?

MR. JENTES: Object, Your Honor. I don't know how he understands what they understand.

THE COURT: Sustained.

MR. CHASE: Well, Your Honor, that does go to something that's critical in this case. That's the use of language to mislead. What he understood language to mean, his intent and his understanding--

THE COURT: Yes, but not his estimation of the other's understanding.

MR. CHASE: Okay, that's fine.

Q (by Mr. Chase) What did you understand the strategic--I'm sorry, that's right. What did you understand--sustained. What did you understand--

THE COURT: I think I'm going to go do some other work.

MR. CHASE: I was going to appeal to Mr. Gilmore, but then I realized that you were right. So, I withdraw my--

Q (by Mr. Chase) What did you understand Wharf to be saying when they were introducing you as their strategic partner?

A Well, they were saying to the world on parading us around in not only this lunch, but other places, that we were partners. We were in business together and that's that. I've already described several times what a strategic partner is, but we were partners.

Q All right. Now, if you'd look over at the next page--no, go two pages in. Well, the next page indicates "dinner on Pacific Princess". Do you remember going out on the Wharf yacht for a dinner party at that particular occasion?

A Yes.

Q Okay. But, the one that I want to call your attention to is the luncheon where you were introduced as strategic partner and that's over on the next page. That indicates "luncheon in honor of Mr. Gene Schneider, Chairman, United International Holdings"; right?

A Yes, sir.

Q All right. And, you notice the guests there would have been the chairman of the Broadcast Authority; do you see that?

A Yes.

Q Okay. And, there's people here from Chase Manhattan Bank. Were these people, in fact, at the lunch, as you recall?

A I wouldn't remember to--I'm sure they were there if this is the list. But, I wouldn't remember specifically one by one. That's a tough question that long ago.

Q Do you remember, in general, people from the government and financial--

A Absolutely. People of this kind were there, yes.

Q Okay. Let me go back to some general questions. We got detoured to the subject of partnering. I want to go back to UIH. You were one of the founders of UIH?

A Yes.

Q And, what was the concept of UIH? What was the business of UIH?

A Well, again, it was an outgrowth of United Cable Television Corporation. We had recognized in United Cable in the middle '80s that the franchise development opportunity, if you would, in the United States was rapidly coming to an end. There was still some construction and building going on, but the green fields were gone, basically. So, we started looking around, and I think we were the first company to be that domestic cable company overseas to see what opportunities might be there and we liked what we saw. In the middle to the late '80s, we got involved in Norway, Sweden, Hungary, Israel, and had started activities in other places. We were heavily involved in the UK in England and had a million and a half homes under franchise there. Well, what happened when we were doing the merger with United Artists which was controlled by TCI--it was really a TCI merger--they did not have--Malone didn't have interest in overseas properties at that time. He does now.

Q Better tell us who Malone is?

A Well, John Malone is the chairman and head of TCI

Q Okay.

A Today, as well as then. And, I was dealing with him on it and he just said, look, I think--well, he kind of laughed. But, he said, they speak English in the UK, don't they? And, I said, yeah, I think so. So, he said, well, let us keep that one and we don't want the others. You take them. You keep them. And, that's how we formed United International Holdings right then and there. We shook hands, and after a while, why, we took those properties out of the merger. They didn't want them. And, that was the beginning of United International Holdings.

Q You mentioned that you shook hands. Did you write it down right away?

A I'm not positive we ever wrote it down.

Q In your 45 years in the industry, have you done deals on a handshake with writing to follow, if ever?

A Well, all the time, you do deals on a handshake. You know, that's a figure of speech. But, that's the way deals are done. I mean, deals are done with people, not pieces of paper.

Q Well, do you eventually get most deals documented?

A I would say so eventually, but the deal was made and reducing it to documentation is secondary to--if you want to do a deal with people who really want to do a deal, they make the deal.

Q All right. Now, you say that you've operated that way over the years. Is that right?

A That's just the way it is, yes.

Q When you say that's just the way it is, is that part of a culture of the cable television industry?

A I think it's probably maybe in the cable television industry; maybe it's its culture a little more because you know everybody. It's a close-knit industry. But, in any industry, I think, you know, you start with the senior people or whoever is making the deal, they make the deal, and at some point it generally gets reduced to writing.

Q Have you had occasion--and, I'm not going to ask you about Hong Kong specifically right now; we're going to get to that. But, have you had occasion to have your company perform, commit money or resources, before something has been committed to writing?

A Yes.

Q Is that something that happens infrequently or is it something that is not unusual?

A When you're dealing with people that you trust and you've agreed on what you're going to set out to do, quite frequently, you know, you're proceeding to do those things and, you know, a good example is what we're doing in Europe right now with Phillips. We're proceeding.

Q Without a writing?

A We have something in writing, but it's just kind of an outline of where we're headed.

Q In other words, it's not the final agreement?

A No, huh-uh.

Q But, everybody is performing?

A Absolutely, we are, yeah. So are they.

Q All right. Let me go back to UIH. We talked about the formation of it. How does UIH make money? What's the concept behind how you make your money? You sell your services, you invest, what do you do?

A Well, you know, I've always told my kids, I said put your money somewhere where it will be making money while you're sleeping. And, by that, I mean you invest in selling services like you do or doctors or whatever. You're not making any money while you're sleeping. The only way you're going to really create wealth is to make money while you're sleeping. And, that's what we do. We are investors.

MR. CHASE: Your Honor, in light of that, I move to withdraw and--

THE COURT: This witness hasn't seen some of the attorneys' fees disputes that I have. There's a 28 hour day.

MR. JENTES: Your Honor, can we talk about baseband decoders?

Q (by Mr. Chase) Mr. Schneider, I'm sorry to interrupt you, but the advice was so poignant, I, in fact, asked myself what I'm going here which is a subject that many people have been asking for a long time. It wasn't funny.

But, getting back to this, how do you make your money?

A By investing and creating value. It's as simple as that. You do not make money--we are not interested in making money as a consultant because that's not where you really create wealth.

Q Have you had opportunities or have you asked to become consultants?

A I don't recall anything specific. We make it so clear up front that, hey, we're here as investors. You know, we do, once we become investors, have a right to invest or agree on what we're doing. Obviously, we are providing services that would be akin to being a consultant, but that's where our expertise comes in as a strategic partner. But, the number one objective is always to be an investor.

Q To your knowledge, has the company ever provided consulting advice without an investment or a right to invest in a project?

A I don't think so, no. I can't think of anything.

Q All right. Now, take me back now to 1990, '91, '92, '93, '94 and tell me about the style of your company when you first started it? Tell me about the general culture of UIH in terms of formality, in terms of size, in terms of who is there and who is talking to who? Now, that's a very compound question, but I do it so that you--and I'll sustain the objection--but so that you can talk a little bit about those areas.

A I don't know. Maybe the easiest way to answer that is--maybe this isn't the answer. But, when we formed United International, it basically was the board of directors of United Cable that put up the bulk of the initial funding. There was some funding put up--it was private; it was a partnership at the time--put up by some of the employees that desired to continue

to follow the company. We raised by today's standards a fairly nominal amount of money, maybe $20 million initially. It was all equity and we were very limited, of course, in those days what we could do, but we knew where we were headed. We had great experience in raising money dealing with public companies and we felt from Day 1 that we were going to be doing that which we did end up doing in July of '93.

Q You mean with the public offering?

A That's when we did our first public offering for United

APPENDIX DJ

Excerpt from Direct Examination of P. Woo

March 17, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5897:04-5903:06; Transcript 3718:04-3724:06)

Excerpt from Direct Examination of P. Woo

March 17, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5897:04-5903:06; Transcript 3718:04-3724:06)

Q Now, you had mentioned in connection with the paper that you had scribbled your notes around on, on Mr. Stephen Ng's memo to you back in the middle of September, something about a technical cooperation arrangement. From your understanding, how had that concept that you had articulated in your notes to Stephen Ng been translated into any agreements for the purposes of the bid?

A On one of the earlier memos, it talked about technical cooperation agreement with both UIH and NYNEX. These are important agreements because that described the way forward. It allows the--give us time, give us room, because the two partners were unable to give us clean confirmations of their status. So this technical assistant agreement was a very important arrangement going forward.

Q In the bid, it's indicated in the portion that I've highlighted here that " Wharf Cable has entered into separate technical cooperation agreements with NYNEX and UIH. Then it describes them, and then it says, "The agreements spell out the kinds of assistance to be provided, the kinds of expert personnel that will be made available and the commercial terms that will govern the provision of these expert services. The term of the agreements are for three years from the date of issue of the license. The technical cooperation agreement with NYNEX and UIH appear in Appendix A."

So far as you personally were concerned, were the technical cooperation agreements to be binding documents?

A Yes.

Q Was any report given to you that people from Wharf had told UIH or NYNEX that the documents were not to be binding?

A No.

Q Let me ask you to turn to Page--excuse me--Tx-531 in your book, which is a copy of the technical cooperation agreement that was entered into with UIH on September 25, 1992.

A Yes.

Q This document was signed by Mr. Stephen Ng and Mr. Michael Fries, the latter on behalf of UIH. Did Mr Stephen Ng have the authority to sign this document on behalf of Wharf Cable?

A Yes.

Q In the opening page of the document under the "whereas clauses," it describes what the contemplation of the agreement was, and it states, and I'll quote, "UIH, through its own personnel and through personnel made available to it by its affiliate or affiliate CATV systems, has extensive experience in providing advisory services for the design, engineering, construction, marketing, promotion, management, programming and operation of cable television systems in the United States of America and Europe."

And it continues, "The company, that is Wharf Cable, proposes to make an application to the government of Hong Kong for the grant of a license to operate a subscription television network, and in connection therewith, the company

wishes to obtain the benefit of UIH's experience and to engage UIH for the purpose of receiving assistance with respect to the administrative and technical operation of this subscription television system on the terms and conditions here and after appearing."

Is that statement of the purpose of the TCA consistent with what your understanding of this arrangement was to be?

A Yes.

Q If you turn over to Page 8 of the document, there's some carryover materials from the top--I mean, excuse me, the bottom of the prior page having to do with independent contractor. And it concludes, "UIH shall have no right or interest in the company, namely Wharf Cable, or in the CATV system, nor any claim or lien with respect thereto arising out of this agreement or the performance of its services hereunder."

How did that line up with what your understanding of the technical cooperation agreement was supposed to be?

MR. CHASE: Your Honor, I'm going to object on foundation as to whether he even saw this document before it was signed or had anything to do with the negotiation of the document.

THE COURT: All right.

Q (by Mr. Jentes) Let me ask you this, Mr. Woo: Did you ever see this document in its actual final form?

A The signed form or the unsigned form?

Q Either one.

A I may not have seen the final form.

Q Did you discuss with Mr. Stephen Ng what would go into the agreement in terms of possible ownership interest by UIH in the cable T.V. project?

A Yes.

Q And what did you tell Mr. Stephen Ng, if anything, about that subject?

A As far as the TCA is concerned, when Stephen first broached the subject with me, I fully support the idea that we must have this arrangement, but I specifically asked him to put in two clauses. This is one of the clauses I asked him to put in to avoid future confusion in terms of actual work done and a meaning of it.

And the second clause I told him to put in was the clause whereby it says that--I don't know which clause it is, but I asked him to put in the clause whereby it says that only written agreements will be binding. Nothing oral can be acceptable that can--that happens during this agreement. So those were my very specific instructions to Stephen.

Q Let me ask you to look over to Page 12 of the document, and I won't read these, but they're Paragraph 14.8 and 14.9. Are these the type of provisions relating to the requirement that there be a written document if there is to be any change in the relationships between the parties?

A That's correct.

MR. CHASE: Your Honor, I'm going to object because it talks about change of this agreement, not the change of relationship among parties.

THE COURT: Sustained.

MR. JENTES: Fair enough. Yeah, let rephrase.

Q (by Mr. Jentes) I guess I can't get around. I'll have to read it. In 14.8 it says, "Notice of termination changes and additions to this agreement, as well as any additional or supplemental agreements to this agreement, must be made in writing. Additional oral agreements are invalid." Let me stop there.

Is that consistent with what you had told Mr. Stephen Ng you wanted to have in any TCA?

A That is consistent.

Q After the bid was submitted in September of 1992, what reports, if any, did Mr. Ng make to you about dealing with NYNEX and dealing with UIH? What was going on in the fall of 1992, as you understood it?

A He updated me periodically like before. I don't--I don't know your question. I don't recall any specific conversations we had during that period, but during that period he updated me in terms of the progress.

Q Did he ever report to you that he had entered into any kind of an option agreement with the people at UIH?

A No.

Q Did Mr. Stephen Ng have authority to enter into an option agreement with anyone?

A No.

Q Why? Why not?

A I made that specifically very clear to Mr. Ng on shareholder issues, he is to make no commitments.

Q Would you explain to the jury why that's a principal that you laid down as far as Wharf is concerned with Mr. Ng?

A Well, I think that, as I said before, the shareholder issues are very serious issues. We had an experience with HKCC that make us reflect on it to ensure that whatever we do, it's sustainable, it's for the long-term interest of the joint venture. We should not be looking for short-term expediencies.

So from that standpoint, I left that decision to myself in terms of final approval for any such arrangements. That's why you'll recall earlier when we received the note from UIH, I made a handwritten note to Stephen Ng to say make no commitments to UIH or anybody. And that is the basis and it's the framework of our working relationship.

APPENDIX DK

Excerpt from Cross Examination of P. Woo

March 18, 1997 & March 19, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5953-6398; Transcript 3774-4219)

Excerpt from Cross Examination of P. Woo

March 18, 1997 & March 19, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5953-6398; Transcript 3774-4219)

CROSS-EXAMINATION

By MR. CHASE:

Q Mr. Woo, I want to go back to the beginning of your testimony. I want to work our way forward.

Now, you testified that your father-in-law, Mr. Y. K. Powell, initially acquired Wharf in the early 1980's; is that correct?

A That's correct.

Q And Wharf then became a public company in part; correct?

A No, Wharf has always been a public company.

Q Okay. Wharf today is owned by the public; correct?

A Yes.

Q And by a company called Wheelock; correct?

A That's correct.

Q And Wheelock owns roughly 50 per cent of Wharf; is that correct?

A Yes, less than 50 per cent.

Q Less than 50 per cent?

A (No audible response.)

Q You have to answer audibly.

A Yes.

Q Okay. In the approximate range of 50 per cent?

A Yes.

Q Now, the Wheelock annual report for 1993-1994 lists your Wheelock shareholdings at 1,000,253,766. Do you see that?

A The listing is the number of shares, It says I have an interest in these shares. It does not say I own it.

Q These are shares that are controlled by you and your family; correct?

A These are shares that I have an interest in.

Q Well, what is the value today of your 1,000,253,766 shares?

A I don't know the market price. I think the market price is approximately 18 Hong Kong dollars a share. So that would be 18 billion Hong Kong dollars.

Q So we're talking roughly something over $2 billion?

A That's correct.

Q American?

A That's correct.

Q And that's the interest that you control in Wheelock?

A I keep saying that your term of usage is wrong. These shares are held by a trust, of which I have an interest, but I'm not an owner of the trust.

Q So it's held by a trust and you have an interest. And in your annual report, it reports these shares under you; correct?

A I think that I must again make it very clear the disclosure rules in Hong Kong means that even if I have one share, and that if I'm a trustee of that share, that trust, I'm interested. So I may not own any of the shares of the trust.

Q The other interested parties in this trust that owns a 1,000,253,766 shares would be members of your family or people with whom you have a relationship; correct?

A That's correct.

Q Now, that accounts for roughly half the ownership of Wharf. The other half of Wharf is owned by the public; right?

A That's correct.

Q And you own, at least as of your 1995 annual report, own, through the Barkley's Private Bank and Trust, Limited, 1,085,241,136 shares; correct?

A Mr. Chase, I really have to ask you to understand ownership and interest is two different things. I do not own any of these shares.

Q I understand that. Barkley's Private Bank and Trust, Limited has a trust; right?

A That's correct.

Q And the trust is set up for the benefit of you, members of your family and people with whom you are related; right?

A No, it's for family members of Sir Y. K. Powell.

Q Of which you are one?

A Of which I am one.

Q All right. And that trust owns 1,085,241,136 shares of Wharf Holdings; right?

A That trust does. I do not.

Q The trust does. What's the value of that?

A Can you refer to the top of the line? I would like to know what is the heading.

MR. JENTES: Your Honor, I haven't objected, but if he really wants to ask very detailed questions, couldn't he give Mr. Woo a copy of this document so he can see it, please?

THE COURT: It's on the board. But, yes, he can.

Q (by Mr. Chase) Sure. Exhibit 1409, and it's not going to be in those notebooks, so I'm going to have to--in the absence of Mr. Gilmore, if I could--

THE COURT: Yes, please.

THE WITNESS: Okay, which page.

Q (by Mr. Chase) 1409, and I'll give you the page here.

Well, your annual report has it at Page 55.

A Can I--now that I've read this particular part, what it does, it says is that Wheelock and Company, which is the company above Wharf, owns the 1,085,241,136, which is the same as the Barkley Trust Private Banking 1,085,142,136. You see, in this case again, Barkley Trust does not own it. Barkley Trust is, because it owns the shares of Wheelock and, therefore, it has to report what Wheelock owns, and so I think that's very, very misleading if you look at it that way.

Q All right. So you're saying that that 1,085,241,000 is what--

A Wheelock owns.

Q Wheelock owns.

A That's right, which is a public company.

Q All right. And we already talked about what you own in Wheelock.

A That's right.

Q Or what your trust owns. Now, let's talk about what you own in Wharf.

A Yes.

Q What do you own in Wharf?

A In the disclosure?

Q Sitting here today, what do you own or control by yourself or through your family or trusts in Wharf itself?

A I don't have the record with me today.

Q Is it over a billion shares?

A Absolutely not.

Q Is it over 100 million shares?

A Absolutely not.

Q All right. Now, what percentage of your net worth, sir, is attributed to Wharf and Wheelock?

A My personal net worth?

Q Yes, your personal and family net worth. And let me refer you to something.

A Yes.

Q Forbes Magazine wrote you up as having a net worth of $2.7 billion. Do you remember that, you and your family?

A Well, if you ask me if I remember that, I may have seen an article, but do I pay any notice to it, I don't.

Q What percentage of that 2.7 billion would be attributed to Wharf and Wheelock?

A Well, first of all, I'm not sure the accuracy of the figure.

Q Well, what percentage of your net worth do you believe is attributed to Wharf and Wheelock?

A As I said, I do not own the shares. The trust officer, Y. K. Powell, owns the shares.

Q And the trust is for the family of Y. K. Powell, including yourself?

A Well, I'm not privy to all the records of Sir Y. K. Powell's trust.

Q Mr. Woo, are you going to give me an answer to what percentage of the 2.7 billion relates to Wharf and Wheelock?

A I do not know the answer to give.

Q Can you give me an approximation of the 2.7 billion? And that would be American dollars; right?

A I'm sorry?

Q That's 2.7 billion American dollars; right?

A It's what you said.

Q Well, that's what Forbes said, didn't it?

MR. JENTES: I'll object, Your Honor.

THE WITNESS: It's hearsay.

MR. JENTES: This is not quite the way to ask the questions. I think he has established that Mr. Woo and the family own a lot of stock in the company.

THE COURT: He's allowed to--

MR. JENTES: And I'm not sure that there's any relevance beyond that.

THE COURT: He's allowed to go ahead in order to get a specific answer, if one is available.

MR. JENTES: Okay.

THE COURT: Overruled.

Q (by Mr. Chase) Mr. Woo, you--

MR. JENTES: Could we then have just a straight question? I'm not--

THE COURT: I don't know.

MR. JENTES: I'm not--just the question and Mr. Woo will attempt to answer.

Q (by Mr. Chase) Mr. Woo, when Forbes--I'm sorry.

THE COURT: I'm saying it's up to counsel.

MR. CHASE: Thank you.

THE COURT: All right, go ahead.

Q (by Mr. Chase) When Forbes Magazine reported in July 17, 1995 the world's richest people, and it listed you and your family as having $2.7 billion, did you see that article?

A I may have seen it. I may have glanced through it.

Q You don't recall whether you looked at an article that listed you and your family as one of the richest in the world?

MR. JENTES: Object; asked and answered.

THE COURT: Sustained.

Q (by Mr. Chase) And when you glanced through it, Mr. Woo, did you make a judgment as to whether the 2.7 billion was accurate?

A I wouldn't.

Q Did you make the judgment as to whether the 2.7 billion was a rough approximation?

A I wouldn't.

Q Do you have any opinion today as to what percentage of that 2.7 billion covers your holdings in Wharf and Wheelock?

A First of all, we don't know the 2.7 figure is a right figure or a wrong figure.

Q Tell me the right figure.

A I'm sorry?

Q Tell me the right figure.

A I don't know.

Q You don't know?

A I don't know.

Q Okay. And you don't know what rough percentage would be Wharf and Wheelock?

A I don't know.

Q Now, Mr. Woo, you've testified about Mr. Ng; correct?

A Yes.

Q And that's Mr. Ng sitting over here, and you believe him to be a trusting and honest person?

A Yes.

Q You believe him to be the kind of person that when he shakes somebody's hands and gives them their word, they can trust him?

A Yes.

Q And you expect people when you put Mr. Ng out there in the world, that people are going to trust and rely on him?

A Yes.

Q And when he says he's going to do something and shakes their hand and looks them in the eye, you can take that to the bank?

A Yes.

Q Now, at the time we're talking about here starting in 1991, Mr. Ng was the managing director of Wharf Holdings, was he not?

A That's correct.

Q And he was also the president of Wharf Communications Investment, Limited?

A That's correct.

Q And he became managing director of Wharf Cable once it was set up, did he not?

A Yes.

Q And he was the person you put out there in the world to be in charge of cable television; correct?

A In terms of the launching and the business of Wharf Cable under the auspices of the board and myself.

Q All right. He's the one you put out there in the world to deal with the UIHs of the world, didn't you?

A Representing me and the company.

Q Representing the company; correct?

A Representing me and the company--

Q All right. Well, let's talk about that. Why don't you look at Exhibit 76, which is in the defendant's notebook. You're going to be notebooked to death here before you're done. But if you could look in the notebooks, actually the ones you've been working with? You can put away that timeline; it's wrong.

A Which one is that?

Q The defendant's.

MR. JENTES: The black notebook.

Q (by Mr. Chase) Yeah.

A There are three black ones.

Q Well, find the one that has Exhibit 76, please. That would be one of the earlier exhibits that you were asked about by Mr. Jentes.

A I took Volume 1.

Q All right. Are you there?

A Yes.

Q All right. Now, Exhibit 76, we can actually--it's pretty short. You got a letter, I take it, from Mr. William Ng sometime in 1991; right?

A Yes.

Q And you didn't respond to that letter, did you?

A No.

Q You had Mr. Ng respond to that letter; right?

A That's right.

Q And he responded by referring to your letter and then saying I look forward to meeting with you and Mr. Schneider at 11:30 a.m. on April 26; right?

A I see it.

Q All right. Now, that I take it, as far as you know, is Wharf's first contact with UIH representatives; right?

A That's correct.

Q Now, I'm going to use my magic pointer here. So we're in April--can you see the timeline from there? Well, I'll tell you what, you don't even have to see specifics. See all the way at the end there, April, 1991; do you see that?

A Yes.

Q And you didn't communicate directly with Mr. William Ng or anyone else from UIH. You had Mr. Stephen Ng do it; right?

A Yes.

Q And that would have been in April, 1991?

A Yes.

Q The first time you ever talked or communicated directly to a UIH representative was in early November, 1993; correct?

A That's correct.

Q And in between that time from April, '91 to November, 1993, roughly two and a half years, you had no contact whatsoever with UIH; right?

A Right.

Q And you never told UIH the limitations on Mr. Ng's authority, did you?

A I never told them directly.

Q You never told them indirectly either, did you?

A I told Stephen Ng.

Q You told Stephen Ng, but you did not tell UIH, did you?

A Stephen Ng is my direct report.

Q Your answer is no, you did not tell UIH?

A I did not tell UIH directly.

Q You depended on Mr. Ng to tell UIH what the limitations of his authority were?

A I'm sorry?

Q You depended on Mr. Ng to tell UIH the limitations on his authority?

A I am the chief executive of the Wharf Holding and the chairman of the company. Mr. Stephen Ng is my direct report and is well known.

Q Well, you didn't tell Mr. William Ng of any limitations on Mr. Stephen Ng's authority?

A Mr. William Ng chose to write to me first. That shows my authority.

Q And then you had Stephen Ng respond; right?

A That's right.

Q And for two and a half years, you saw one paper after another referring to UIH, did you not?

A I do. I did.

Q And at no time in that two and a half years did you directly communicate with UIH?

A I did not directly communicate with UIH.

Q And at no time in two and a half years did you ever tell anyone from UIH that what was being proposed by Wharf was unauthorized?

A I'm sorry?

Q At no time during that two and a half year period of time did you tell anyone from UIH that something being proposed by Wharf, anything being proposed by Wharf, was beyond the authorization of Stephen Ng?

MR. JENTES: Your Honor, I object I guess just to vagueness. I'm not sure what something suggested by--

MR. CHASE: I'll rephrase, Your Honor.

THE COURT: All right.

Q (by Mr. Chase) During that two and a half year period of time while you saw one paper after another that referenced UIH cross your desk, you never contacted a UIH representative to tell them that something was unauthorized; isn't that right?

A I don't understand your question. This is not how business is done.

Q Answer my question. My question is in two and a half years, as you saw references to UIH cross your desk, you never once picked up the phone, wrote a letter or contacted anyone from UIH to tell them that something being done was beyond the authorization of Stephen Ng, did you?

A I didn't see anything unauthorized being done.

Q Is the answer you did not contact UIH?

A No, I did not see anything unauthorized being done. So, therefore, there's no need for me to do anything.

Q All right. Let me ask you--we'll come back to that, I promise you. Let me take a detour here for a second.

You've talked about the fact that this was supposed to be a cable television project with an eye towards having telecommunications, telephony, telephones; right?

A That's correct.

Q Now, in 1989 when HKCC got its license, it got a license for both television and telephony; right?

A That's correct.

Q Combined license?

A That's correct.

Q And then that license was basically revoked because the parties gave it up; right?

A That's correct.

Q And then in 1991, your company made a couple of proposals to try to get that license back; right?

A That's correct.

Q And that was denied; correct?

A Not the same license we didn't apply for.

Q The license that you had lost through the HKCC, you were trying to get that back; right?

A No, we applied to government for a new license.

Q A new license. Was that an application for both television and telephony?

A It's a proposal for both cable television and telephony.

Q Now, in 1992 when the government came out with its guidance notes, the guidance notes were for cable television only, were they not?

A That's correct.

Q They separated off telephony?

A That's correct, at that time.

Q Now, look, if you will, please--well, let me just finish with this. Okay, so they separated off telephony, and in September, 1992--September, 1992, the only thing we're talking about is a cable television franchise; right?

A That's correct.

Q That's the only franchise that was awarded at that time?

A At that time, it was unoffered.

Q Okay. Now, sometime in 1993, your company also applied for a telephone license; right?

A That's correct.

Q And the telephone license was granted sometime in 1994, wasn't it?

A That's correct.

Q When in 1994?

A I can't recollect exact date.

Q Do you remember if it was the first quarter, the middle of the year?

A I can't, no. I'll be guessing if I attempt to answer this.

Q You believed, did you not, that whoever got the cable television license would have an excellent inside track to get the telephone license; right?

A Yes.

Q And that was widely believed in Hong kong?

A That's why I believe.

Q And you believed that strongly, didn't you?

A Yes, I did.

Q And so whoever got that license on September 30, 1992, which was a cable T. V. license only, had the inside track to get telephone; right?

A Has a good chance.

Q And if they didn't get the September 30, 1992 cable television license, there was a good chance they wouldn't get telephone?

A The facts proved that there are two other people that got the telephone license, too. So I don't think that is a conclusive remark that can be made.

Q Your mindset in 1992 was that if you got that cable television license, you'd have an inside track to get telephony; right?

A That's correct.

Q And so that put double pressure on September 30, 1992 to get a bid that would win the cable television license?

A I'm sorry?

Q That put double pressure on September 30, 1992 for a bid for the cable television license?

A No.

Q Well, if you didn't get cable television, you'd lose cable television and you'd lose the inside track on telephony; right?

A No, I think if you don't get cable television, I think that's the end of the exercise for us.

Q Okay. That's it then; right? You're out of it?

A Yes.

Q All right. Now, look over--you always understood also, did you not, that you were going to operate the cable television and the telephony separately?

A I don't understand your definition of separately.

Q That you were going to have different companies running cable television and telephony, that it was not going to be run from the same company, yes or no?

A Well, they are two different operations, and there are many ways to structure it. It can be structured in a way that there are two different companies operating it, or it can be two divisions within one company. So I don't think that question is something that I feel is very relevant.

Q Well, relevance will be ruled on from the bench. But let me go back into this. Whether it was two separate companies or two separate divisions, you wanted to keep telephony and television separate?

A There are some logistic aspects of it which would combine the two operations.

Q They could share the infra-structure, but they'd be different businesses; right?

A They'd be part of the multi-media, multi-service, multi-product overall offer on offer to the public.

Q Let me see if I can--

A As one group under Wharf Communications.

Q I'm going to ask you about a couple of documents here that span about a year period, a year and a half. The first one, look at Exhibit 91, please. And that's going to be in the white notebooks. It's not going to be in the ones Mr. Jentes showed you.

A Which volume?

Q It would probably be in the first volume, Exhibit 91.

A Yeah.

Q Now, this is a memo from you to Mr. Ng of May 20, 1991; correct?

A That's correct.

Q And it's called further thoughts to notes on cable; right?

A Yes.

Q All right. And it says--I'm going to look at Point 2 there.

A Yes.

Q "Give our approach to our bid and to avoid future possible partners' interest or non-interest in both the MMDS and second network, we should consider setting down a formula that essentially separates the two projects with pre-described parameters on facility sharing, cross-charges, et cetera. New partners would be asked to accept the formula prior to entry." And then you list the reasons for that. Do you see that?

A Yes.

Q Was that your thinking in May of 1991?

A As reflected in the memo, yes.

Q All right. Now, look, please, if you will, at Exhibit 629, and I'm going to have to bring that up to you because I don't think it's in the witness book.

A 629? I think I have it here.

Q I don't think you have it there.

A Okay.

Q Well, it might be in the main set. I'm sorry. We're into the Byzantine world of notebooks here, and I'm not going to try to explain that.

Look at Exhibit 629. This is a document called file note, meeting with KPMG Pete Marwick on October 19, 1992. Do you see that?

A Yes.

Q Now, that's a file note by Mr. Stephen Ng, is it not?

A Yes.

Q That he wrote on October 21, 1992; right?

A Yes.

Q Now, why don't you tell us first who Pete Marwick is?

A Pete Marwick is an accounting firm in Hong Kong.

Q And it was their job as hired by the Hong Kong government to scrutinize your bid to see if your bid would be acceptable; correct?

A I suppose so.

Q And during this October, 1992 time period, that's exactly what Pete Marwick was doing, scrutinizing your bid; right?

A I don't know the exact details.

Q Well, you do know that you submitted a bid on September 30th; right?

A That's correct.

Q And you do know that it wasn't granted until June--or late May, 1993; correct?

A That's correct.

Q And before it could be granted, the government had to scrutinize and study the bid to see if it should be granted?

A That's correct.

Q And Pete Marwick was who the government hired to be their advisors on this; right?

A I'm not sure whether there are other advisors to government, but if the record shows that they are, I have no question about that.

Q All right, look over, if you will, on Page 2 of this document.

MR. JENTES: Excuse me, Mr. Chase. I think Mr. Woo put the notebook away.

MR. CHASE: I don't need the notebook.

MR. JENTES: Oh, a different document?

MR. CHASE: No, he's got the document outside the notebook.

Q (by Mr. Chase) Mr. Woo, look over on the second page of the document.

A Yeah.

Q Do you see the highlighted--it's highlighted up on the screen, and it says, "It would be reasonable to assume that once the network infra-structure is in place, there would be a great deal of synergy for telecom services to be delivered over part or all of that same network. Wharf Cable has, however, not included in its bid much information about its telecom plans. What are Wharf Cable's plans?" Do you see that? That's a question being posed.

A Yes.

Q And do you see SN's reply, Mr. Ng's reply? "Wharf Cable is, in principle, interested in applying for a telecom license in addition to the television license. A separate team is currently analyzing the telecom guidance note and the business plan. However, since there is no assurance that Wharf Cable will get a telecom license, and indeed it is not clear that telecom will be an attractive investment given the open licensing framework, Wharf Cable's television plan is, for the time being, built entirely around a television business, assuming no revenue or expense from telecom. Furthermore, Wharf Cable has

specifically obtained Rcb's clarification that telecom information is not required for the cable bid, and will not be given any credit." Do you see that?

A Yes.

Q And was that the view of Wharf at the time of this memo?

A That was Mr. Ng's reply.

Q Was that your view at the time of this memo?

A That was Mr. Ng's reply in response to a question posed by a consultant to the Hong Kong government.

Q That's not my question. My question is does that accurately reflect your views as of the time of this memo?

A I think that at that time, the Wharf group's views in terms of the future is that, given the questions from the consultants which are specifically viewing the cable bid, is that we do not need to tell them all the options that we have in mind. I don't think we need to review the detailed plans because that's really not the purpose of the exercise.

As you see from the reply, the Wharf Cable has really at that time established from RCB's clarification that telecom information is not required for the cable bid, and will not be given any credit. So, in other words, Stephen Ng's role at that meeting would be to say, look, I noted your question, but in fact whatever the answer I gave you would not be a credit or debit to this proposition.

So I think that Stephen is saying that, look, I don't want to tell them all the information that we have. At that time, as far as the Wharf group's thinking is concerned, we have our

overall thinking about the telecom issues, but these issues give us total flexibility.

Q All right, Mr. Woo, I'd like an answer to my question. Does this statement by Mr. Ng--

MR. JENTES: Your Honor, I don't think that that's a proper question.

THE COURT: He hasn't asked the question yet.

MR. JENTES: Yeah, I think--

THE COURT: It's all right. Overruled.

Q (by Mr. Chase) Well, Mr. Woo, I'm going to ask you one more time. Does Mr. Ng's statement there accurately reflect the views of Wharf at the time of October 21, 1992?

A Well, Mr. Stephen Ng's reply does not reveal the Wharf group's plans on the telecom side because there is no reason for Stephen to give those information and, therefore, Stephen has reserved total flexibility for the Wharf group to formulate or establish its future direction with all the options available.

Q So there were plans of the Wharf group and intentions of the Wharf group with respect to telecom that are not disclosed to Pete Marwick here?

A No, I'm saying that the--whatever Stephen had to reveal in that meeting is the amount that he felt appropriate. But those information that's reviewed does not restrict Wharf's overall thinking.

Q So were there facts, or was there overall thinking, as you used the term, that was not disclosed in this answer to the government, or the government's consultants?

A Well, I think that it's very hard to specify any sort of specific line of thinking. As I said before, given the scope and the complexity of the project, there are many thoughts and many ideas that has been thought about and we have not specifically tied down to any particular way of action that we felt we definitely have to decide at that point in time.

Q So there were things that you did not disclose to the government or its consultant in response to this question?

A They didn't ask for these things.

Q So as far as you're concerned, Mr. Ng's reply here is a full, complete and truthful answer to the question that was asked?

A Mr. Ng has provided the information that is necessary, that is appropriate, and because the telecom subject is not the specific subject on question as far as the cable bid is concerned, therefore, he has reserved Wharf Company's position.

Q Did Mr. Ng tell the people at Pete Marwick or the government that he has reserved the company's position and is not going to tell them the whole position?

A No, I think his response there was very clear, and by virtue of his response, he in fact had reserved his position.

Q Now, you today run the telecom and the television business separately, do you not?

A They operate under two licenses and there are two boards. Stephen Ng is the person in charge of both companies, so

therefore, the businesses of New T&T and Wharf Cable is under the total responsibility of Stephen Ng. and he is the one that would utilize all the resources within those two companies and maximizing any synergistic benefits of the two if it need be, and then in terms of combining specific or certain resources that each of the companies control, and I think that's the right way to go about it, and he will continue to operate that way.

Q My question is they're two separate companies; right?

A That's correct.

Q They have two separate boards of directors; correct?

A That's correct.

Q They have two separate sets of officers; correct?

A That's correct.

Q They keep two separate sets of books; correct?

A That's correct.

Q They have two separate agreements among themselves as to who's supposed to do what?

A I don't know the agreements, specific agreements you're referring to.

Q The finances of the two are kept separate; correct?

A That's correct.

Q And as of this day, 1997, you don't have a telecom partner, do you?

A We do not.

Q And as of this day, 1997, you don't have a cable partner, do you?

A We do not.

Q And at no time have you taken on a telecom or a cable partner, have you?

A No, we have not.

Q Let's go back to HKCC. HKCC, first of all, never did operate a cable T.V. system, did it?

A No.

Q I'm sorry?

A It did not.

Q It got cut off right after the time it got the license; right?

A It was a start-up operation.

Q Well, it started up and went nowhere; right?

A It was a start-up operation and the board decided to terminate around the last quarter of 1990.

Q Let me make sure we understand this when you say it was a start-up operation. Not an inch of cable was ever put down, was it?

A No.

Q And there was no SMBS system, subscriber management bills system, acquired, was there?

A When I mention about the start-up operation, a management team was hired and a chief operating officer was hired. We negotiated with all the contractors, with contracts ready to be issued. We are talking about laying cables, in terms of acquiring all the supplies with regard to fiber optics and coaxial cables.

There are contracts being negotiated with contractors who are going to lay those cables. There are discussions with suppliers in terms of converter boxes. We're talking about the build-up of a management team with different levels of management being hired, and at that time, as I mentioned earlier to this Court, that's when the Star T.V. situation come about and a lot of these particular requests for purchase, a lot of these negotiations were to final stages. Studios were basically designed and ready to go in.

However, some of the shareholders were having cold feet because of the Star T.V. situation being reported and being considered by government, and that's when the money aspect problem came in. Some of the shareholders said look, let's not put any money in. So a lot of start-up operation that was being planned and ready for executions were put on hold as a--

Q All right.

A Can I finish, since you asked the question about start-up?

Q Well, I'm going to let you finish and I'm going to let you say whatever you want.

A Okay.

Q I will tell you that as a concession to the shortness of human life, I'd like you to kind of keep it to my questions. But go ahead.

MR. JENTES: Your Honor, I really object to comments from counsel. Just let Mr. Woo answer the question.

THE COURT: The objection is overruled. It's a matter for counsel to decide how they're going to conduct their cross-examination within the rules.

Q (by Mr. Chase) Mr. Woo, I don't want to cut you off, so you go ahead and finish your answer.

A Well, I think the reason I want to answer that is because you made a point about actually there's nothing been done, and I think that didn't reflect the situation. I think that it's important that we know the background, and the background was that because of the Star T.V. situation, the start-up team was fully ready with contracts ready to execute on hand, and the money from shareholders didn't come because they were worried about the Star T.V. situation.

So I think that I just wanted to make sure that when you ask me that question that my answer reflected the true situation, that indeed there was a full start-up operation. Indeed, it was fully staffed. Indeed, activities were in what I call the active mode. But the money was not there, therefore, a lot of these executives had to sit there and wait for the board to give them the money. And that was the situation at that time.

Q Have you completed your answer?

A Yes, I have. Thank you.

Q Now, the various parties, partners in the HKCC, and what were there, about five or six partners in that?

A Five partners.

Q Among them, there was a very elaborate agreement, written agreement, was there not?

A That's correct.

Q And there was provision in that written agreement providing for just about everything, including parties that didn't want to put up their money; correct?

A That's correct.

Q And having that written agreement didn't prevent HKCC from falling apart, did it?

A Well, the shareholders themselves voted because of an environmental change.

Q And they voted consistent with the agreement that they had?

A I believe that the four parties who wished to terminate this matter put the matter into a deliberate shareholder mode, and that was what the final outcome was.

Q All right. And so it fell apart?

A It terminated.

Q Now, in the HKCC, what Wharf brought to the table for its 28 per cent was local connections; correct?

A I don't--I mean, it's very hard to specifically put any one aspect. I think certainly one aspect that they want us to be in, from my earlier conversations with U.S. West and other partners, in terms of management, in terms of because we have established a good reputation as a good manager, and they want us to lead as managers and they wanted me to be chairman of the company and to take the bid forward. These were some of the things and, of course, in terms of our working knowledge and the working relationship with the Hong Kong government.

Q All right. You brought--your company brought no cable T.V. expertise to the party, did they?

A From day one, like I said before, U.S. West approached us and we were flattered that, you know, we were asked to look at this matter, and we looked at that as an opportunity, and that opportunity proved to be an experience for us to get involved with cable television.

Q So the answer is you did not bring cable expertise to the party?

A No.

Q Okay.

A Not at the beginning.

Q All right. And in the spring of 1991 when you were first talking to UIH, nobody at Wharf had experience in running a cable T.V. system, did they?

A As I explained before in my testimony, when you say running a cable television, I take it to mean that to start up the company from scratch, to involve in the--to engage yourself in terms of hiring, to engage yourself in terms of dealing with the

contractors, to engage yourself in terms of dealing with suppliers of programming, and also in terms of engaging yourself in dealing with the programming, the execution, the producing of programming. That we have.

Q Now, Mr. Woo, you never put--HKCC never put a program on the air, did it?

A No, because it never opened.

Q And HKCC never had a single subscriber, did it?

A No, because we'd have no money to start.

Q All right. And so nobody at Wharf Cable or Wharf Holdings got any experience from HKCC about how to run a cable T.V. operation?

A As I said before, we had the experience of start-up. We had the experience of engaging management in a very intensive way. We have experience in engaging program suppliers and producers in a very active way.

Q Mr. Woo, let me cut you off because we don't need a repetition of that. I'll ask you a different question here.

You never put on a program or had a subscriber, so you don't know if anything you did or any experience you got in your start-up mode was any good, do you?

A We believed that the experience tells us that we're working with experienced people. Among the people we hired are people from the States that I hired myself. During the process, I had discussed with many consultants. We have hired many consultants that work with us, and the whole period is quite a long period, and that period give us tremendous exposure to it.

And as far as cable television business in Hong Kong was concerned, it's never been done in Hong Kong. So it is not talk about a cable television business in America. We're talking about a cable television business in Hong Kong, and we feel that we understand the local conditions and we feel that by talking to the consultants, they feel that the local conditions are extremely important, and in fact, they find that a lot of things we tell them, they didn't know how to handle because they have never faced the kind of situation that we talked about.

So I feel that the experience is very, very important, and just like any business when you start up any operation, you are facing risks. If you ask me that we know whether the program that we have will be receptive to the public, if you ask me that would the system go out, would it work, all I can say is that certainly from a government standpoint, when they pick us to win the franchise, they have a lot of confidence in us. They have extreme trust that we do have the capabilities, we do--we have the proposal that will be viable. Otherwise, they wouldn't have awarded us the contract.

Q Are you finished with your answer?

A Yes.

Q All right. Now, do you remember having your deposition taken in this matter?

A Yes.

Q You remember I was in Hong Kong in 1995, May 22nd, took your deposition?

A Yes, I remember that.

Q You were under oath; had to answer truthfully?

A I was.

MR. CHASE: Mr. Gilmore, would you hand the witness Volume 1 of his deposition, please?

THE CLERK: I hand the witness a transcript of deposition taken May 22, 1995.

THE WITNESS: Yeah.

Q (by Mr. Chase) All right, Mr. Woo, turn over to Page 82 of Volume 1.

A Yes.

Q Let me ask you if I asked you these questions and you gave these answers. And I'm starting at Line 13 on Page 82.

A Yes.

Q "In the spring of 1991, did anybody connected with your company have any experience in running a cable television system?" Answer, "No. After spring of 1991-- "

A Wait a minute. Which page are we talking about?

Q I'm talking about Page 82.

A 82. Wait a minute.

Q Do you want me to start again?

A Yes, please.

Q Yes, tell me if these are the questions and answers. Question, "In the spring of 1991, did anybody connected with

your company have any experience in running a cable television system?" Answer, "No."

A That's right.

Q Question, "After spring of 1991, and prior to the time of the bid, do you know whether you hired or retained anybody with experience in running a cable television company?" Answer, "I cannot recollect."

Do you see that?

A After spring, 1991.

Q Were those questions asked of you and were those your answers under oath at your deposition?

A Yes.

Q Now, NYNEX is somebody who you were talking to at the time; correct?

A I'd have to check the records.

Q Well, you've testified on direct that starting sometime in 1991 and running all the way up through I don't know when, 1993 at some point, you were talking to NYNEX about coming in as a partner; right?

A Based on the evidence that I see.

Q And NYNEX was expert in telephone, not cable; correct?

A That's correct.

Q So they weren't going to provide you the expertise in cable television, were they?

A No.

Q Now, let me ask you to focus for a minute on what you were going to do to get the expertise. Do you remember your testimony about Mr. Henry--do you want to read your deposition for a while, or do you want to--

A Yes, can I? Because I'd like to read this thing, especially on the first question. May I?

Q Well, I'll tell you what. We're not going to stay here while you read your deposition. Your counsel can ask you on redirect if there's something that I've neglected to ask you here.

A No, I just want to answer the question that you put to me, and I want to make sure that I answer it properly.

Q Well, let's see. Let's go back to Page 82, Lin[illegible] 13 through 16. I'll tell you what, do you want to read some more?

A No, I think that I'd like to start with the first question that you asked.

Q All right. "In the spring of 1991, did anybody connected with your company have any experience in running a cable television system?" And your answer was, "No." Then the next question was, "After spring of--"

A You asked me is that correct, and my answer--

Q Mr. Woo, look, I'm going to ask the questions here and you're going to give the answer. The first question I asked you at your deposition on this subject is, "In the spring of 1991, did

anybody connected with your company have any experience in running a cable television system?" Your answer was, "No." Then the next question was, "After spring of 1991, and prior to the time of the bid, do you know whether you hired or retained anybody with experience in running a cable television company?" Answer, "I cannot recollect."

That was your testimony under oath at your deposition.

A That's correct.

Q Now, let me ask you to talk to me about Mr. Wise. Do you remember Mr. Wise?

A Mr. Henry Wise?

Q Yeah. Now, he was somebody who had worked for the government and became a consultant to Wharf; correct?

A That's correct.

Q And he became a consultant on telecommunications issues?

A Yes.

Q And in 1991, he provided you with a strategy paper on his thinking of how Wharf would get into the cable television business; right? Do you remember that?

A He provided our company with a strategy paper.

Q All right. And this is a cover page. It's a memo from Mr. Ng to Mr. Higgonson indicating a copy to you at the bottom; do you see that?

A Yes.

Q And do you remember, and this is transmitting Mr. Wise's memo--

MR. JENTES: Excuse me, Mr. Chase. Could he get the actual document in front of him?

MR. CHASE: Good point. It's Exhibit 75, and it's in the--

THE WITNESS: Exhibit 75.

Mr. JENTES; Are we the white notebook?

MR. CHASE: We're the white notebooks.

Q (by Mr. Chase) 75.

A Okay.

Q 75 is a transmittal from Mr. Ng of Mr. Henry Wise's memo, and you can see the second page is notes on strategy for cable T.V. in Hong Kong. Do you see that?

A Yes.

Q And these notes are written as an aid to formulation of a strategy for Wharf to make its bid to secure a leading position in any project in Hong Kong for a cable television system and a second telecommunications network. Do you see that?

A Yes.

Q Now, you had Mr. Wise as a consultant for the very purpose of advising your company how to talk to the government in terms of getting things like franchises; right?

A He is one advisor. There are other people we talk to, I suppose.

Q Nobody else wrote a strategy paper on how to get back into cable, did they?

A Some people like to write papers.

Q I'm not asking whether people like to write papers. I'm asking did anybody besides Mr. Wise--

A Not that I can recall.

Q --write a strategy paper on how to get back into cable television?

A I thought your question was asking about advice, and I think that we take advice from many people, and some people chose to write papers.

Q Is your answer that nobody else besides Mr. Wise wrote a strategy paper on how to get back into cable television?

A I said other advice may not be in paper, yes.

Q Well, you got this memo from Mr. Wise; right?

A I got this memo from Stephen Ng.

Q Okay. And did you read it?

A I may have. It's been many years ago.

Q Do you remember anything. Have you seen it recently in preparing for your testimony here?

A No.

Q You haven't looked at it?

A I don't think given the volume of evidence here, I don't think I can go through every paper in detail.

Q So your answer is you haven't looked at this?

A I haven't looked into detail, nor do I recall really looking into very, very great depth.

Q Well, did you look at it at all?

A I--you're asking the question with such a big volume. I may have looked at some, but if you ask me whether I looked at any specific ones, I'd really be hard to say that I have or I have not.

Q So you don't know whether you've seen this in the last couple of days?

A Not recently, no. But when you ask me have I seen it, you know, at the time when it happens, I may have and I may have looked at it in more detail at that time. But if you ask me, you know, how much do I know about it, I don't know how I should answer this question.

Q You saw it as of the time of your deposition, didn't you?

A I'm sorry?

Q You saw this document as of the time of your deposition, didn't you?

A I may have.

Q Let's look over on Page 10--well, let's take our time.

Let's look first at Page 8. Mr. Wise is giving a run down of what various companies might be interested in doing and whether any of them would make good partners for Wharf. Do you see that on Page 8?

A Uh-huh. Yes.

Q And he talks about NYNEX at this time. It says, "NYNEX does not give the impression of wanting to invest, although it shows signs of being keen to transfer technology." Do you see that?

A I see it now.

Q And what's your understanding of transfer technology?

A As a concept?

Q That means provide services; right?

A That's true.

Q Provide consulting services?

A Uh-huh.

Q And that was Mr. Wise's impression of NYNEX's intent at that time; right?

A That's what his report says.

Q Now look over at Page 10. On Page 10 up at the top, there's a section called Smaller Partners; do you see that up at the very top?

A Yes.

Q He says, "There are a number of options here, and some are listed below. Choice to some extent would be determined by the need or otherwise to bring in certain areas of expertise or to add slightly to the probable political acceptability or overall balance of the consortium. While it is, of course, not absolutely necessary to obtain expertise only from partners, the attitude of Hong Kong government has tended to be that it is an important need. This is probably because it makes life easier for the decision maker if he has objective criteria on which to judge applicants."

Do you see that?

A Yes.

Q And did you agree with that position at that time?

A Neither do I agree, nor do I say no. I just noted.

Q What do you mean you noted it?

A Well, I note a lot of comments made by various people that submit papers to me. I don't necessarily have to say yes or no. I think this is at the early stage of knowledge--the knowledge assembly, and so, therefore, I don't usually would want to make a comment unless I feel very strongly about any one point.

Q All right, let's see if you felt strongly about this. Let's go back to Exhibit 91, which is in the black notebooks--white notebooks. I'm sorry. There's two colors I have to remember and I can't get them straight.

A Exhibit 91?

Q Yeah.

A That's a white notebook?

Q White notebook.

A Okay.

Q Exhibit 91. This is a May 20, 1991 memo from you; right?

A Yes.

Q To Mr. Ng; right?

A Yes.

Q And this is just shortly after Mr. Wise's memo; right?

A Yes.

Q And you say, "Further thoughts to notes on cable. One, to establish criteria to win and to sustain the winning image. To consider potential partners such as TVB, a Bell company, Singapore, U.S. investors, Japanese investors." Do you see that?

A Yes.

Q Now, look now at Exhibit 79. And that's in the same notebook. This is an April 20--and I want to call your attention to one page of 79. 79 is a grouping of documents of correspondence between your company and Hellman and Friedman that was acting on behalf of Falcon Cable.

A Yes.

Q And I want to call your attention to an April 24, 1991 memo from you to Mr. Ng regarding a conversation you had with Brian Powers. In fact, I think you testified about a part of this memo during your direct, but you didn't testify about the part I'm going to ask you about.

A Okay.

Q Are you there?

A Yeah.

Q Now, Mr. Powers, as you testified on direct, works for an investment company, and one of their clients is Falcon Cable; right?

A That's correct.

Q And you were talking to Mr. Powers about bringing in Falcon Cable as your cable T.V. partner?

A No, Mr. Brian Powers was suggesting he would like to suggest that as a partner to us.

Q Well, that's what your conversation was about; right?

A That's right. He's making that proposition to me.

Q Okay. And then in Paragraph 5, the part that I've highlighted, you said, "I said that U.S. investors in this project could be attractive in a certain sense. However, that must be packaged so that not just capital participation, know-how should be packaged into any partner's qualifications so as to make our bid more attractive to Hong Kong government." Do you see that?

A That's right.

Q And that accurately reflects what you told Mr. Powers?

A Yes.

Q And that accurately reflects what you were thinking at the time?

A Not all I'm thinking. That's only part of my thinking.

Q Well, I'm not going to ask you all of your thinking.

A Well, you just asked me my thinking.

Q Because if I asked all your thinking, we might be here for the rest of our lives and beyond, because I give you credit for being a thinker. But I want to talk about this particular subject.

A Yes.

Q On the subject of partners, this is what you told Mr. Powers; right?

A This is what I told him.

Q All right. Now, look at Exhibit 157, please.

A One--

Q 157. I'm going to be using the screen for these, so I don't know that it's necessary to--

A I have it.

Q --have the jury worrying about the book. Are you at 157?

A 157, yes, I've got it.

Q All right. 157 is a group of documents of correspondence and meetings relating to your company and a company called Murdock; correct?

A Yes.

Q And you testified on direct that Murdock is a famous publishing company; is that correct?

A That's correct.

Q And you were talking to Murdock about them coming in as a partner in cable television?

A I believe this memo was written by Stephen Ng and a copy to me.

Q All right.

A So I was not talking to them directly.

Q As a matter of fact, it is from Stephen Ng with a copy to you, and you understood he was talking to them about becoming involved in your cable operation?

A Yes.

Q All right. And this is dated November 11, 1991. It's from Mr. Ng to you, and he's talking to a man named Holloway who's associated with Rupert Murdock; correct?

A That's correct.

Q And he says, "Holloway asked what Wharf would expect from Scmp Murdock. Sn," and you understand that to be Stephen Ng; right?

A That's correct.

Q --"explained that Wharf Cable is looking for strategic partners, e.g. NYNEX, a cable company based in Denver, and Murdock."

A Which paragraph?

Q I'm looking at Paragraph 5. Do you want me to start over?

A Yes, please.

Q "Holloway asked what Wharf would expect from SCMP Murdock. Sn explained that Wharf Cable is looking for strategic partners, e.g. NYNEX, a cable company based in Denver, and Murdock. We expect the strategic partners to bring their respective expertise and connections to the consortium." Do you see that?

A Yes.

Q Now, did that accurately reflect your thinking as well in November, 1991?

A That accurately reflected our wish in terms of what we'd like to do.

Q All right, good. This was Exhibit 157. I'm sorry if I missed that. Look now, if you will, please, at Exhibit 66. Is 66 there in the--66 should be in the same notebook.

A Okay.

Q 66. Now, 66 is a grouping of some of these weekly reports to chairman and chief executive; do you see that?

A I see that.

Q By the way, on direct examination, you testified that you were the chief executive officer in 1991?

A I'd have to check my records when I was chief executive officer.

Q You were not chief executive officer in '92 or '93, were you?

A I'd have to check our secretary records, because I belong to so many companies, it's very hard for me to give you a specific day when I was on and when I was off.

Q All right. As of this time in this strictly private and confidential memo, weekly report to chairman and chief executive, that would be you; right?

A That's correct.

Q And this contains a grouping of reports, and what I want to do is I'm not going to ask you about all of them, I'd just ask you to turn over to the report of September 21, 1991, and that's

stamped on the bottom WC 21433. This is September 21, 1991.

A Uh-huh.

Q Are you there? The handwriting on the document is yours; right?

A I have not got the page yet.

Q Okay, I'm sorry.

MR. JENTES: It's got a Page Number 9 written in the lower right-hand corner.

Q (by Mr. Chase) Right. That's probably easier to find.

A Yes, I have it now.

Q All right. September 21, 1991, report from Stephen Ng to you with your handwriting; right?

A That's correct.

Q All right. Now, in the left margin by the exclamation point, it's cut off slightly, but it looks like it said, "Identify someone we need to win." Do you see that?

A Yes.

Q In fact, that's what you wrote there, isn't it?

A Yes.

Q And that's next to, "Following up with NYNEX, UIH, News Corp and others," then in parentheses Singapore, "for

partnership interest." And then you list other companies as well; correct?

A That's correct.

Q And you were looking for companies to help you win the television bid; right?

A Yes, the--can I just run through the memo first? Because I have no chance to read it.

Q Take your time.

(Witness reading exhibit.)

A Yes, I think at that time, the thinking that we have is always that we will like to find a way that would give us the best chance to win. But of course having said that, the way that we're talking about cannot exceed our own requirement in terms of our principles. And the various principles that I have testified up to now are the guiding principles. In other words, we would not find someone to help us to win and will give up the shop. I don't think that is on our mind at all.

Q Of course, the person who would be talking to these people that you were trying to identify to help you win would be Stephen Ng; right?

A That's correct.

Q Now, let me ask you to turn over to Exhibit 382. And that's in the same color notebooks. Same notebook, I'm advised.

A 382.

Q 382. And that's a big one. Do you have 382 in front of you, Mr. Woo?

A Yes.

Q Now, 382 is a document entitled Wharf Communications Investment, Limited. And it says, "Minutes of board meeting, August 24, 1992." Do you see that up at the top?

A Yes.

Q I'm going to zoom in on that a little bit so people can see it. And if you'd turn to the third page of the document, it indicates, "Board meeting August 11, 1992." Do you see that?

A Yes.

Q And the August 11 board meeting was actually continued to August 24, 1992, and that's why we have these August 24th minutes; isn't that right?

A Based on the records, it seems to be the case.

Q All right. And at this August 24th board meeting, was presented the attachments to this document, right, the document entitled WCIL Strategic Planning Document?

A Yes.

Q Okay. And that was presented by Mr. Ng and Mr. Fung; correct?

A It was presented.

Q By Mr. Ng and Mr. Fung; correct?

A I can't recollect every meeting, who makes the presentation. But it was presented to me.

Q Given the nature of this, isn't it likely that it would have been Mr. Ng and Mr. Fung?

A If you say so. You know, you asked me; I can't be definite.

Q I wasn't there.

A I was there, but you ask me the number of meetings I've been attending, who makes the presentation at which meeting, I'd be just guessing.

Q All right. You were there for the presentation?

A Yes.

Q Turn over to Page 5. Are you there?

A No. Yeah, here we go.

Q All right. It talks about strategic actions. "Gain access to advanced know-hows in emerging technologies via impact acquisition and alliance with local and international strategic partners." Do you see that?

A Yes.

Q And then it goes on in that paragraph, same paragraph, and says, "Initially, joint ventures will be formed with established market players to gain industry insights and credibility." Do you see that?

A Yes.

Q And then at the bottom of the page, it has Strategic partners. Do you see that?

A Yes.

Q And it says, "Initially WCIL," that's Wharf Communications; right?

A Yes.

Q --"will seek to associate with partners who are seen as leaders in the region or world in segmented market areas, such as, "and then we turn the page, and we get" cable television, UIH." Right?

A Yes.

Q And that's the presentation that's made to you on August 24, 1992 by your staff; correct?

A Yes.

Q Now, flip over, if you will, please, into the document, and the numbering starts to get difficult, but now I'm looking at Control Number 01369 and it looks like it's part of an overhead presentation or a slide presentation. And eventually I'll straighten it out here.

A Yeah.

Q And that talks about the approach that your company is going to use. "Gain access to advanced know-hows, products and emerging technologies via impact acquisitions and alliances with local and international strategic partners."

Do you see that?

A Yes.

Q And that's the strategy being proposed to you on August 24, 1992?

A Yes.

Q Now, flip over, if you will, please, at the next page, and it says, "Potential strategic partners. NYNEX Telecom, UIH Cable Television." Do you see that?

A Yes.

Q And that's your understanding of the lineup at that time; correct?

A These are being considered.

Q All right. Anybody being considered that's not there on that list at that time?

A But these people are being considered.

Q Listen to my question. Were there companies that were being considered that are not shown on this list at that time?

A I can't recall.

Q Now, I'd like you to go to Control Number 01384, and it's a document that is part of this collection of materials, and it's got handwriting on it. Do you see that?

A Which page? Can you tell me again?

Q 01384. It's some handwriting down in the bottom of one of the typed pages.

A 01384? Yes.

Q Do you know whose handwriting that is?

A I have no idea.

Q Would you have any reason to doubt that it's Mr. Fung's handwriting?

A I have not--I don't know.

Q Do you recall it being presented to your meeting on August 24, "Partners. Establish fall-back position if partnership issues cannot be resolved, selling the concept of alliances in the bid." Do you recall that?

A No.

Q You were in fact selling the concept of alliances in the bid, were you not?

A You mean a technical cooperation agreement?

Q I mean the concept of alliances. In your bid, you were selling the concept of an alliance with NYNEX and an alliance with UIH, were you not?

A We were describing the relationship we will have with NYNEX and UIH.

Q And it was important to you to get that into the bid, wasn't it?

A Not at any cost.

Q I haven't asked you about cost. We'll get to that. I'm asking you whether it was important for you to get that into the bid that you had these alliances?

A Not at any cost, not at any arrangement.

Q Whose idea was it at that meeting selling the concept of alliances in the bid?

A If you are referring to the TCA--

Q I'm not.

A Well, that's the only time we talk about actual crystallizing of the idea of some service arrangements with service providers.

Q I'm talking about August 24, 1992. Now, you don't understand there have been discussions about a TCA at that time, do you?

A I have no idea. I have no recollection.

Q And at that time, you're having a meeting of the Wharf Communications group, board; right?

A Yes.

Q And at that time, you're being presented a strategy paper on how to get the cable television license; correct?

A We discussed the various aspects and up-to-date information.

Q And one of the things discussed at that meeting was establish fall-back position if partnership issues cannot be

resolved, selling the concept of alliances in the bid. That was presented and discussed at that meeting; correct?

A We may have, but I do not specifically recall that.

Q Let me ask you to look over on Page--well, the next page of this document is called Wharf Communications Investment, Limited Board Presentation. Do you see that? The next page of this group of materials.

A Yes, I see that.

Q All right. And this would be Control Number 01385, and I'm going to ask you about the second page of that where it says, "Strategic Equity Partners," and ask you to turn over there.

A Yeah.

Q Are you there?

A Yes.

Q Now, under this heading, it says, "Strategic Equity Partners. The participation of strategic partners in our communications projects represents a key competitive advantage in gaining committed and unbiased access to operating experience, as well as industry profile and credibility." Do you see that?

A Yes.

Q And then the last sentence of that paragraph says, "Our aim in strategic partnerships, having operations based in Hong Kong, would be to maintain majority control." Right?

A Yes.

Q So you would be talking about having partnerships and you maintaining control. That would mean having more percentage interest than anybody else; right?

A No.

Q Well, having more than 50 per cent interest.

A No, it just means that besides having control, we have total operational control.

Q Okay. And as a majority shareholder, you would be able to do that, wouldn't you?

A No. Certain joint ventures do not allow you to do that.

Q Well, let's--let me go back to this document, because I skipped a sentence here, and then I want to go back to that subject. The sentence I skipped, "As the communication industry presently possesses a steep technological curve, our partners are also in a position to transfer research and development expertise that we would otherwise need to replicate at significant cost, both timing and financial." Do you see that? That's the part that's in white in the middle of the two different yellows.

A Yes.

Q All right. And that was part of your strategic thinking at the time with respect to strategic equity partners; right?

A Provided it falls within our own guidelines.

Q All right. Well, that's what's being presented here to your communications board; right?

A That's right.

Q Now, the next page goes on to say, "We are presently at the closing stages of signing memoranda of understanding with potential partners for Wharf Cable. They include United International Holdings, UIH, cable T.V. expertise." Right?

A Yes.

Q And so you saw right there in front of you that they were--that you were considering and getting into the final stages with UIH; correct?

A That's correct.

Q Now, this is August 24, 1992. Okay? Right?

A Yes.

Q All right, let me talk to you about--before we get back to UIH, let me talk to you about what you tried to do before you got to that point of August 24, 1992 with UIH. And you did, in fact, shop the market for other cable partners, did you not?

A Stephen talked to many people, yes.

Q You didn't personally?

A I did not, except when I got a call from Brian Powers, and of course then I immediately passed that message to Stephen Ng. So in that sense, when you asked me whether I did, I did not directly do it. Stephen does all the contacts.

Q All right. So your company, through Mr. Ng, was shopping the market in 1991 and '92 for a cable partner?

A That's correct, as one of the partners of the three and the four partnership arrangement that we talked about. That was the proposition on the table and we're not searching for only a one party joint venture with us.

Q Well, I didn't ask you about that. I just want to focus on the cabled partner, and I think everybody in this room understands that it's your position you had to have more than just a cable partner.

A Well, I just want to make sure that when I answer that question, it's in that context.

Q All right. I think everybody gets it, Mr. Woo, but I want to talk to you about a cable partner for a minute here.

You talked to Falcon Cable. That was the one Mr. Powers was representing; correct?

A I didn't talk to them. I talked to Mr. Powers.

Q I'm sorry. I'm being figurative here. Your company talked to Mr. Powers?

A Yes.

Q And Falcon considered the possibility of coming in as your partner?

A Yes.

Q And they rejected it?

A I don't know what final decision that they made, but certainly we didn't think that there was a proposition that has a lot of merit of further continued discussions.

Q You learned in fact that they turned you down because they wanted majority control, didn't you?

A No.

Q You didn't learn that?

A I don't recall that.

Q All right. Well, besides talking to Falcon, you also talked to a company named News Corp; right?

A Yes.

Q And they turned you down?

A Yes.

Q And you talked to Fox to come in as a programming partner; correct?

A Yes.

Q And they turned you down?

A Yes.

Q And you talked to TCI Time Warner to come in as your cable partner, didn't you?

A Yes, we talked.

Q They not only turned you down; they went over to your enemy, Hutchison, didn't they?

A I don't know whether they did or not.

Q You know that prior to September 30th, it was widely believed that TCI Time Warner was allying with Hutchison to submit a bid?

A There are a lot of rumors in the market in Hong Kong, as always. Whether that actually happened or not, it may have, but as you know, Hutchison never submitted a bid. So we don't know.

Q Your belief at the time was that Hutchison had allied itself with TCI Time Warner?

A No one knows for sure. I've never seen any contract. There was never any announcement by Hutchison, so I think if you talk about market speculations, yes, there are market speculations. But are there factual proof? I don't have any myself.

Q I'm not asking factual proof. We've got enough on our hands here in this case. I don't have to prove the Hutchison/Time Warner case.

A Okay.

MR. JENTES: Your Honor, I really object to argumentative questions by Mr. Chase. It seems to me that rather than making a running commentary, he ought to simply ask a question. I object to the fact that it's argumentative.

THE COURT: The objection is overruled.

Q (by Mr. Chase) Mr. Woo, let me ask you who else you talked to besides those companies about coming in as your cable partner?

A If you ask me, I cannot give you a slate of people that we talked to. But the records would show who we talked to.

Q Why don't you look at Exhibit 128.

A I'm sorry, which one?

Q Exhibit 128, and it will be in the same notebook you've been working with.

A 128? Right.

Q Now, this is a memo from Stephen Ng to you of September 18, 1991; correct?

A Yes.

Q And it talks about cable partners; right?

A Yes.

Q Now, it runs through a list, and I'm not going to go through this list, but it starts with NYNEX, who you understood to be a telephone partner anyway; right? A possible telephone partner?

A A possible partner with telecom expertise.

Q All right. And it says, "NYNEX is finally actively reviewing this opportunity." Do you see that?

A Yes.

Q And down below that, skip a paragraph and it says, "Generally, NYNEX has been very slow in reacting." Do you see that?

A Yes.

Q And that's the experience you had with NYNEX from 1991 all the way through the end of time; right?

A I cannot classify the behavior through a long period of time. The certain period of time would be--the reaction would be slower. There's a certain period of time the reaction would be faster. So I don't think one can generally categorize the behavior in such a long period of time.

Q All right. Let me go down to Bell Atlantic. You were talking to Bell Atlantic about cable?

A About the overall prospects of cable and telecom joint project.

Q They weren't interested in cable, were they?

A They didn't say that they were not interested in cable to me.

Q Well, they said to somebody that they were not overly keen?

A Well, that's not my direct feedback as far as my contact.

Q Well, when Mr. Ng tells you that Bell Atlantic is not overly keen, do you believe him?

A Well, that's a comment that Mr. Ng reported to me. That's in his report.

Q Did you believe it?

A I noted it.

Q Did you believe it?

A I noted it.

Q I don't know how long we'll do this, but we might go up to the lunch hour. Did you believe it?

A I noted it.

MR. CHASE: Your Honor, I'd ask that the Court require the witness to answer the question.

THE COURT: Yes. Yes or no; you either believed it or you didn't. Please tell us.

Q (by Mr. Chase) You have to answer.

A I believed that Mr. Ng had reflected his feeling on this matter, yes.

Q Did you believe it?

A I believed Mr. Ng's feeling.

THE COURT: All right, let's go on.

Q (by Mr. Chase) Let me go down to U.S. Sprint. U.S. Sprint was somebody you guys were talking to, but they weren't interested either, were they?

A Which paragraph says that?

Q Paragraph 3. Numbered Paragraph 3.

A Well, the paragraph says no response.

Q Well, you never did get a positive response from U.S. Spring, did you?

A We didn't?

Q My question.

A We didn't? All I can say is let's check the records. I don't know whether we have further discussions with them or not. I'm sorry, because there's so many discussions that's going on, I think Stephen keeps me informed in these notes. So, therefore, based on these notes, I would be updated on the matter.

Q Let's talk about BT. That's the next paragraph down. "Bt is also on my hit list."

A Yes. Which paragraph is that?

Q Do you see Paragraph 4?

A Yes.

Q "However, I have been advised by their man in Hong Kong in clear terms that unless telecom is clearly part of the package, they are unlikely to be even interested in considering." Do you see that?

A Yes.

Q And so BT was not interested in becoming your cable partner, were they?

A Based on this memo, yes.

Q Based on this memo, they were or they weren't?

A Based on this memo, they were not, based on what Mr. Stephen Ng said.

Q And that never changed, did it?

A I don't know.

Q Look over at the next page. Now, News Corp we talked about; right? They weren't interested?

A I cannot add any more to what the paragraph says.

Q All right. And we've talked about News Corp, so I'm not going to bother you with that.

Now, at this time, Mr. Ng was talking to UIH; correct?

A What is the paragraph?

Q That's Paragraph 6. "UIH is very keen and is somebody we can tie down reasonably quickly if we like." Do you see that?

A Where I put a question mark there?

Q A question mark, yes, out in the right.

A Okay, that's my question mark, yes.

Q All right, you put a question mark there.

A Yes.

Q So at that point in time, you knew UIH was interested?

A But I have a question mark there.

Q All right, tell us what the question mark means.

A I can't remember.

Q All right, then let's leave it alone. At this point in time, you knew UIH was interested?

A But I have a question mark. I don't know why I have a question mark, but I have a question mark.

Q Mr. Ng believed that UIH was interested; right?

A I mean, I can't say any more than the memo. I'm sorry.

Q All right. You don't have any reason to doubt the accuracy of what Mr. Ng says there in the memo, do you?

A As reflected by Mr. Ng, yes.

Q You do doubt the accuracy?

A No. I mean, Mr. Ng makes his report the way he sees it.

Q All right. So you agree--you have no reason to doubt the accuracy of what he's saying?

A Can I just explain? When I look at these memos, I note these memos, and if I have a question, I put a question mark, and that's all. I see many memos every day, and I do note these things. So I'm sorry, I don't know how to answer your questions because--

Q Mr. Woo, you not only noted this memo, you wrote all over it.

A That's right. I make comments as appropriate. But places where I don't make comments, I don't know how to respond to your question.

Q All right. So my question, I'm not trying to trick you, although your counsel may think differently. I'm not trying to trick you. My question simply is do you have any information to doubt the accuracy of what Mr. Ng says in that Paragraph 6?

A I don't have any information other than what I see from this paper.

Q All right. And is there anything on this paper that causes you to doubt the accuracy of what you see in that Paragraph 6?

A I don't know. I just put a question mark there without knowing why I did it. I mean, it's so long ago, I'm sorry, I don't know how to answer you.

Q All right, let's go on to 7. Let's see if we can do 7. "Brian Powers Group is somebody else we have made contact with." Now, that was Falcon, correct?

A Yes.

Q And, we've talked about Falcon. Let me talk about the next paragraph, that's TV-Tokyo?

A Yes.

Q Part of the Neki Group, right?

A Yes.

Q All right. Now, it turned out they weren't interested in coming in as your television partner, were they?

A No.

Q Then, the next group that you have down there lurking in the background, as Mr. Ng says, is Singapore, Inc.; right?

A Yes.

Q What is Singapore, Inc.?

A Singapore, Inc.; the Singapore Telecom, Singapore Broadcasting Services, those two are in the telecommunications business. So Stephen, basically, tried to use the common jargon that's been used by most people called Singapore, Inc.

Q And, they didn't want to come in as your cable television partner, did they?

A No, I can't say anymore. I can't answer that.

Q And then, there's Qua Ku Sang of TVB; do you see that?

A Yes.

Q Actually, TVB is what? What is TVB?

A Oh, TVB is Television Broadcasting Corporation which is one of the television stations in Hong Kong.

Q And, ultimately, you couldn't partner up with them either for your cable television, could you?

A No.

Q And then, there's a group of smaller companies listed there, right?

A Yes.

Q And then, at the bottom of the memo, Mr. Ng says, "It might be useful if I can have a discussion with you to work out strategies and directions to go forward. Please, let me know." And, while you were noting this, you put "yes", exclamation point. Correct?

A Yes. That means please discuss with me.

Q Right.

A Yeah.

MR. CHASE: Your Honor, this would probably be a good time for the lunch recess.

THE COURT: All right.

(11:55 a.m.-Jury excused.)

(11:56 a.m.-Recess accordingly.)

AFTERNOON SESSION

(At 1:23 p.m. on March 18, 1997, with counsel for the parties present, and with the jury present, the following proceedings were had:)

THE COURT: Go ahead, please?

MR. CHASE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Woo, before the break, we were talking about some of the other companies that Wharf had considered as a cable television partner. Let me talk to you about UIH. Now, you testified on direct that in the summer of 1991, you wrote Mr. Ng a note regarding UIH, and this was Exhibit 96. I believe it would be in the defendant's books there which I think are the black books.

A Yes.

Q Okay. Why don't you get that handy?

A Which volume?

Q Well, it's 96. It's probably in their first volume.

A What's the number of the exhibit?

Q 96.

A There isn't--I've got 98.

Q Maybe you're in the wrong set. Well, here, I'll give you one. Here's 96. This is the exhibit you were looking at yesterday, a handwritten note.

A This is the volume that--

Q Yeah, well, sometimes life's not perfect. Things don't get where they're supposed to. That's why God gave us Elmos so that we can rectify the situation.

A Yes.

Q All right. That's your handwritten note and what you testified to yesterday was that it related to--and, now that I've gone to all this trouble to give you 96, it related to 95; 95 being a letter from UIH that you--do you have 95 there?

A No.

Q Maybe you're in the wrong set of notebooks.

A 84(b) and 98, in between there's nothing.

Q Sounds like a metaphysical concept, but never mind. These were the documents shown yesterday and so I assumed they'd be in the defendant's group. If not, we can--

MR. JENTES: Why don't I hand him--I'll hand him one.

MR. CHASE: All right.

THE WITNESS: Thank you.

Q (by Mr. Chase) Now, do you remember testifying yesterday that the handwritten note of yours was prompted

by this June 25, 1991 letter from UIH in which they talked about a project this size should have, at least, two partners or three partners, or whatever? Do you remember saying you were in agreement with part of that letter?

A Yes.

Q And, that's what prompted your note of June 27, 1991 which we've identified as Exhibit 96?

A Yes.

Q All right. Now, if you will, please-- and you testified at some length about that yesterday, didn't you?

A Yes.

Q All right. Now, would you, please, look at your deposition, Volume I?

A Yeah.

Q Now, this is the deposition that we took of you on May 22, 1995, the same one I was reading from before?

A Yes.

Q All right. Turn to Page 108, please?

A Yes, I have it.

Q Look at Line 10 and I'm going to ask you whether I asked these questions and you gave the answers indicated. All right. Question, "Let's look at 2096 which is your handwritten memo." Now, if you look over at Exhibit 96,

you'll see the deposition exhibit references 2096. Do you see that?

A Yes.

Q And, you answered, "Yes."

A Yes.

Q "And, this appears to relate to UIH; correct?" "Hmm, yes." "And, it says 'I believe in the first point UIH noted and paper produced by them useful.' Is that correct?" Answer, "Yes."

A Yes.

Q I'll read it and you can wait until I'm done and then tell me if I've done it correctly. "So, that must indicate you saw some paper produced by them; is that correct?" Answer, "Yes." "Do you remember it being the June 25 letter or you don't recall?" Answer, "I don't recall." "Do you recall what was useful about it, the paper that you saw?" "I'm sorry?" "Do you recall what was useful about the paper that you did see?" "I have no idea."

Now, that was your answers to my questions about this exhibit when I asked you in May 1995, correct?

A That's correct.

Q Now UIH, as we saw from a previous memo, was in your company's opinion keen and somebody that you could tie down very quickly; right?

A I'm sorry, can you ask again?

Q The exhibit we looked at earlier--and you're welcome to look at Exhibit 128 if you want to refresh yourself--

A Yes, please. Yes.

Q Go ahead?

A 128. It's not here. 128.

Q Well, that's going to be in the white books, probably.

A I have Exhibit 128.

Q And, that's a September 1991 document?

A That's correct.

Q And, in that document, Mr. Ng observed, "UIH is very keen and is somebody we can tie down reasonably quickly if we like." Right?

A That's what the note said.

Q And, you were aware of that going into the fall and winter of 1992; correct?

A I answered the question before I put a question mark here. I don't know what it meant, but what's reflected in the note is correct.

Q All right. Now, early in the winter of 1992, your company concluded that UIH's financial capability was not satisfactory, didn't they?

A We didn't have a good knowledge, enough knowledge, but there were question marks.

Q Why don't you look at Exhibit 192, please? Are you at Exhibit 192?

A Yes, I have it.

Q Now, that's a Wharf Cable weekly coordination meeting held on January 21, 1992; right?

A Yes.

Q You were not at the meeting, I take it?

A No, I was not.

Q On the second page of this document, it indicates, "UIH's financial capability is not satisfactory." Do you see that?

A Yes.

Q Was that reported to you at or about the time of this meeting?

A I can't recall.

Q Do you recall knowing it in the January/February 1992 time period?

A I can't report a time.

Q Wasn't it Stephen Ng's job to report to you those things that were important with respect to potential cable partners?

A Yes.

Q And, wouldn't it be important that somebody you're talking to about being a cable partner had unsatisfactory financial capability?

A I think that my best recollection, Stephen would have mentioned to me sometime, but I can't specify what time.

Q All right. Well, was it Mr. Ng's practice to keep you posted on a fairly regular basis as to what was going on?

A Yes.

Q Now look, please, if you will, at Exhibit 251, same set of books?

A Right.

Q Exhibit 251 is a collection of Wharf Communication Investment Limited private and confidential weekly reports to chairman starting with June 12, 1992. Do you see that?

A I see it.

Q You looked at some of these yesterday and you're already looked at some today again?

A Yes.

Q All right. Now, let me ask you to look over at the June 26--look over, if you will, at the June 19 note, second page in.

A Yeah.

Q Now, under UIH for June 19, it says "appraise financial position", right?

A Yes.

Q And, that's what Mr. Ng is reporting to you?

A Yes.

Q And, by that time, he had reported to you what was determined in January 1992; that UIH's financial capability is not satisfactory?

A Timing-wise, I don't know exactly, but he had reported to me.

Q At least by this time he had, hadn't he?

A Yeah. I mean, I don't know the exact time, but yes.

Q All right. Then, go over to the next time. You're looking at June 26, 1992 and same thing; "appraise financial position", right, under UIH?

A Yes.

Q And then, you go over to July 10 under pay tv.

A Yes.

Q Do you see that?

A Yes.

Q It says, "JV discussion with Newscorp/UIH, appraise financial standing." Do you see that?

A Yes.

Q And so, during this period of time, Mr. Ng tells you that they were unsatisfactory, but he's still evaluating it?

A I don't know when he advised me that it was unsatisfactory, but I think the evaluation process took place at that time.

Q And, that's what he's reporting to you here?

A That's correct.

Q July 17, 1992, still reporting that, correct? "JV discussions with Newscorp/UIH, appraise financial standing."

A Yes.

Q July 31, "JV discussions with NYNEX/newscorp/UIH." Nothing about appraising financial standing, right?

A That's correct.

Q And, correct me if I'm wrong, but it doesn't come up again in these particular reports about evaluating UIH's financial standing?

A If that's what the record says, I would agree with that.

Q Okay. Now, with whatever knowledge you had of UIH at this point in time, you had a Wharf Communications board meeting on August 11. I'll ask you to look at Exhibit 336. I believe these probably are in the jury book. Are you there?

A 336, I have it.

Q Now, before, I questioned you about a continuation of this August 11 meeting that went into August 24. Do you remember that and we looked at that fixed strategy planning document?

A I'm sorry?

Q Do you remember, before, I questioned you about a continuation of this August 11 meeting that went into August 24?

A Yes.

Q And, we talked about that strategy document that was prepared and presented?

A Yes.

Q Okay. Now, I want to talk about what happened on August 11. Okay?

A Okay. Is there an exhibit for that?

Q That's Exhibit 336.

A Okay.

Q Do you have Exhibit 335 in front of you?

A Yes.

Q And, that's August 11?

A Yes.

Q You're there, right?

A Yes.

Q And, Mr. Stephen Ng is there?

A Yes.

Q And, at this meeting, you discussed partnership on August 11?

A Yes.

Q And, at this point in time you have, "UIH intend 10 per cent participation. MOU to be signed before the end of this month." MOU meaning memorandum of understanding, right?

A Yes.

Q And, it talks about NYNEX. "Their board meeting will be after our bid submission. How to package non-equity situation by bid closing." Do you see that?

A Yes.

Q So, it's clearly anticipated as of the time of this meeting that you've got UIH and NYNEX doing two different things, isn't it?

A I'm sorry?

Q It's clearly anticipated as of August 11, 1992 that you've got UIH and NYNEX doing different things. One is intending 10 per cent equity with an MOU to be signed; and the other one is to be packaged for the bid in a non-equity situation. Right?

A Well, I don't know exactly the meaning of your comment. But, what I see here is that there are some intended actions for an MOU which is a three-party MOU. I understand that to be the case. But, certainly, as far as NYNEX is concerned, we are trying to base on this note a look at the alternative actions.

Q Well, it doesn't have anything about three parties next to MOU, does it? That's just next to UIH, isn't it?

A The MOU that we referred to is a three-party MOU.

Q Where does it say that?

A Well, a lot of times when you're talking about an MOU, there's only one MOU being discussed which is a three-party MOU. So, you don't need to put in the qualifications every time.

Q It's your testimony that this language of MOU next to UIH meant a three-party MOU with NYNEX to sign it? Is that your testimony?

A That would be my understanding.

Q Do you remember that happening or is that how you're interpreting it right now?

A No. When I talk about MOU, the only MOU that's in my mind is a three-party MOU; no other.

Q That's what you're testifying to today?

A No. This is my understanding. This is my knowledge in terms of my own understanding for the whole process.

Q All right. At that time then, you understood that UIH and NYNEX were going to be parallel; right?

A At that time, everybody's efforts are looking at a three-party MOU.

Q And, when it says "package NYNEX non-equity situation for bid", it doesn't say that about UIH; does it?

A I don't think that at this point in time the final resolutions are very clear. I believe that NYNEX was going through their process. Everyone is going through their process. In fact, in terms of Fox, we don't know where they are. But, as far as I'm concerned, this whole paragraph and this discussion on partnership is about a multi-party partnership and not about a single two-party joint venture.

Q And, that's how you interpret these words now?

A That's what my understandings are at that time. I have never envisaged anything but a multi-party MOU.

Q Did you explain that carefully to Mr. Ng?

A Mr. Ng knows my overall strategy in terms of partnership and that's been explained to him way from when we started the project.

Q So, there couldn't possibly be then any confusion in his mind that it has to be three or nothing?

A I think it's very clear in his mind it cannot be two.

Q All right. Let's talk about what was going on then in the summer of 1992. You testified yesterday--this is Exhibit 799(k) and this would be one of the defendant's

exhibit that was shown to you yesterday regarding Falcon Cable. Do you remember that testimony?

A (No audible response.)

Q Do you remember the testimony that you approved the joint venture considerations that Mr. Ng sent to Falcon?

A Based on the record of the minutes, there was some discussion papers being sent to Falcon Cable, yes.

Q Joint venture discussion papers?

A Yeah, joint venture discussion papers.

Q And, these were sent with your approval?

A For discussion basis, but no commitment basis.

Q And, you approved that with Mr. Ng, but you didn't discuss it with Falcon; right?

A I did not discuss directly with Falcon.

Q And, you understood that the papers that would be sent to UIH would be modeled on the basis of the Falcon papers, right?

A That's right; also on a non-committal basis for discussion purposes.

Q Based on your conversation with Mr. Ng, but not with UIH?

A Not with UIH, not directly.

Q All right. Now, here's the paper that's forwarded--this would be Exhibit 79(l) used yesterday forwarded to Falcon strictly for discussion purposes only. It says that, right?

A Can I have the full paper, please?

Q Yes, it's 79(l).

A I can't--is it the black book or the white book or--79(l).

Q It should be in the black. It's not there?

A I don't know. I'm just searching. 79?

Q (l).

A 79, but not 79(l).

Q Well, I'll tell you what--do you want to loan him one? Look at what Mr. Jentes has handed you. That is the Falcon Cable/Hellman & Friedman joint venture considerations that you would have authorized Mr. Ng to forward to Falcon for discussion purposes only. Right?

A Yes.

Q Now, this paper talks about a joint venture between Wharf and Falcon; right?

A Can I read this?

Q Please?

(Pause.)

A Yes.

Q Now, that proposed joint venture paper, that discussion paper, doesn't say a thing about a third-party, does it?

A Not from the paper.

Q And, it doesn't say a thing about any conditions precedent, does it?

A No, it doesn't.

Q Now, this is the model that your company used to forward the same kind of paper to UIH; right?

A Yes.

Q And, that's with your approval, right?

A Yes, on a non-committal basis.

Q Non-committal is what you told Stephen Ng, right?

A That's what I told Stephen Ng, yes.

Q Yes. Now, look at Exhibit 253, please?

A 253?

Q 253, and that would be--I'm sorry, that's going to be in the white book. Are you in the white book?

A No, I've got it.

Q Oh, you do? Good. 253, June 16, 1992 from Mr. Fung to Ms. Sonjia Norman sending a joint venture paper. Do you see that?

A Yes.

Q And, attached to it is something that looks strikingly like what you sent to Falcon, right?

A Yes.

Q And, that document doesn't say a word about having a third venturer, does it?

A Well, the contents based on the exhibit as shown, I have no comments on that.

Q Okay. Do you remember seeing this before it went out UIH?

A I'm sorry?

Q Did you see this before it went out to UIH?

A I may or may not. I can't remember.

Q But, you would have approved this?

A I would agree that discussions were to be held on a non-committal basis with any of the prospective candidates.

Q Discussions along the line as set forth in this Exhibit 253; correct?

A Correct.

Q And, it doesn't say a word about conditions, does it?

A Well, it's based on whatever the content of this document says.

Q All right. Let's go to Exhibit 363, same book. Or if it's not in the black book, it will be in the white book.

A 360--

Q 363.

A Yes.

Q Are you there?

A Just a minute. Yeah.

Q Now, 363, we're moving forward by two months here; August 18, 1992 from Emil Fung to Sonjia Norman of UIH. Do you see that?

A Yes, I have.

Q And, it's a second draft of this joint venture paper, correct?

A That's what the subject matter was stated, yes.

Q And, by second draft, you understand, I take it, that they've looked through the first, they've modifications, and now they're talking about--when I say "they", UIH and Wharf talking about the second draft?

A Yes.

Q And, you would have authorized this draft, as well?

A I have no recollection of my involvement in the drafting of this paper. And--do you want me to continue?

Q You would have authorized it, wouldn't you?

A I have not been involved in a drafting of this document, and any document after negotiation with any prospective clients need to come back to me for final approval.

Q All right. I didn't ask that. I asked whether you authorized this document?

A No, it's for discussion purposes.

Q Did you authorize this document to be sent to UIH?

A I did not authorize.

Q Is it unauthorized?

A I have not been involved in a drafting of this document.

Q Well, take a look at it. Would Stephen Ng have had the authority to send this document to UIH for discussion purposes?

A Oh, this is within the realms of Mr. Ng's responsibility.

Q All right. So, he would have authority?

A With authority based on the instructions I've given him.

Q Did he have authority to discuss a joint venture relationship along the lines set forth in this Exhibit 363?

A He would have authority to discuss with prospective candidates with regard to a tentative structure, but proposals will be subject to my approval.

Q Well, when Mr. Ng is sending out these joint venture papers to proposed partners, do you intend that he have good faith discussions with these partners?

A Absolutely. I think that it is very, very vital that discussions continue. As I mentioned earlier, he is to have constructive discussions. A lot of times, these constructive sessions must be done in a more organized way and this is a manner to do these organized discussions.

Q All right. So, you're aware that he's having these discussions with potential partners along the lines of these joint venture papers?

A He's authorized to discuss joint ventures and then he will bring back to me whatever recommendations that he may have.

Q Did you ever get on the phone or write to UIH and tell them that you have to be the final word on this?

A No, I have not.

Q All right. Now, look at this joint venture paper here. Mr. Woo, if you could speak a little more directly into the microphone.

A Okay. Can you hear it now?

Q I can hear fine, but I'm worried about the whole room. It's a big silly room.

A Okay.

MR. CHASE: Sorry, Your Honor. I made it for 33 minutes without insulting your courtroom, Your Honor, but--

THE COURT: Almost, almost. When this case is over, you can count on a pro bono appointment.

MR. CHASE: That's two now, Your Honor, and I don't think you want to be filling up the prisons of this state or the Federal system with my representation.

Q (by Mr. Chase) Back to you, Mr. Woo. Let's talk about this particular document. It says, "Corporate form. United International Holdings to secure 10 per cent of the ordinary shares of Wharf Cable, a company to be incorporated in Hong Kong." Do you see that?

A I see that.

Q And, this is the discussion that Mr. Ng would be having with UIH towards the end of August 1992. Correct?

A Yes.

Q And, there's not a word in this document about having to have a third party, is there?

A No.

Q And, there's not a word in this document about conditions precedent, is there?

A Not that I can see.

Q And, you never communicated with UIH or any other partner about what to believe or what not to believe with respect to these discussion papers, did you?

A I never communicated with UIH.

Q Let's take a look at Exhibit--

MR. JENTES: Excuse me, Your Honor. If we're about ready to finish with the document, I'd like to ask for a fairness reading from the cover memorandum of Mr. Emil Fung.

MR. CHASE: You know, I'll read the whole thing.

MR. JENTES: No, you don't have to read the whole thing. I would just appreciate your either putting on the screen or reading the second and third paragraphs on the opening memorandum from Mr. Fung to Ms. Norman.

THE COURT: All right.

MR. CHASE: Would you like me to read that?

MR. JENTES: Sure.

MR. CHASE: Okay.

Q (by Mr. Chase) The second paragraph, your counsel has asked me to read this, Mr. Woo. So, you get a break for a second. "I would ask that you review this document with the view of it forming the basis of our eventual preparation of a memorandum of understanding/letter of intent by the end of this month. After the Mou is prepared, we are aiming to complete a shareholder's agreement by the end of September for inclusion in the bid. I envision that the primary difference between the MOU and the final shareholder agreement will be the details relating to financial commitment and capitalization. Otherwise, the MOU will incorporate the full specification of corporate governance terms, defaults, et cetera. Tim Bellis of Herbert Smith will be representing WCIL in our shareholder matters and he is in

the process of preparing a draft of the MOU for our collective review. After your review of this latest commercial outline, if you have any items that you would like to have included in the first MOU draft, please let me know."

Do you see that?

A Yes, I do.

Q And, I read it correctly?

A Yes.

Q And, that doesn't say a single word about NYNEX, does it?

A No.

Q And, as of the date of this document, it doesn't say a single word about having a third partner, does it?

A This memo didn't.

Q And, it doesn't say a single word about additional conditions precedent, does it?

A It says this MOU.

Q That's all it says, right?

A That's right.

Q Now, let me ask you to look at Exhibit 339 and that's probably going to be nowhere. Let me get a copy of that.

A 390--

Q No, I'm going to have to bring you a copy. Just a second. Let me hand you what's Exhibit 339. Here you go.

A Okay.

Q This is an August 12, 1992 transmittal from Wharf to NYNEX; Mr. Don Oswald of NYNEX. Do you see that?

A Yes.

Q And, this transmittal appears to contain joint venture considerations, right?

A You're talking about August 12 memo?

Q That's right.

A Or letter from Emil Fung?

Q From Emil Fung to Don Oswald of NYNEX sending him a discussion paper on joint venture considerations. Do you see that?

A Involving NYNEX and Cable?

Q That's right.

A Okay. I see that.

Q Do you see the transmittal that's with it, the joint venture considerations?

A Uh-huh, okay.

Q Now, that doesn't say a word about UIH anywhere in that document, does it?

A No.

Q It doesn't say a word about three partners, does it?

A No.

Q It doesn't say a word about conditions precedent, does it?

A Not on this letter.

Q And, this would have gone out to NYNEX with your authority, as well?

A That is gone out under the supervision of Stephen Ng.

Q And, he would have had authority to send this to NYNEX?

A I don't give him specific authority on any one letter he sends out, but I give him authority in terms of overall approach to this matter which I described before.

Q And, the overall approach taken in these various joint venture considerations is consistent with Stephen Ng's authority?

A I'm sorry?

Q The overall approach taken by Stephen Ng in these various joint venture memorandum are consistent with his authority?

A Consistent with his responsibilities to oversee the various activities that was necessary for the discussions of potential partners.

Q And, these terms that he proposed for discussion with NYNEX, UIH, and Falcon, all of them singly with Wharf, is consistent with Wharf's policy at that time?

A Well, I believe that it is consistent in a context when Wharf is discussing with multi-parties and not knowing which party is going to be the final party. So, very often, you would deal in a basis whereby you are corresponding with the party that you thought that could be a prospect and you talk to them on the basis of need-to-know basis. And, as far as the other parties, you would do the same because at any one point in time you may discuss it with A, B, and C and perhaps when you're discussing it with A, it's not necessary that B would be brought into the picture. But, on an overall basis, you are in the process of preparing the basic framework of what you thought that you want to achieve at the end of the day. But, I can see the context here of this negotiation and discussion with NYNEX.

Q All right. So, if I understand what you just testified to, you would have Wharf dealing with NYNEX separately; Wharf dealing with UIH separately; and when, as, and if it suited Wharf, it would bring the two together?

A No, I'm not saying that, at all. I'm saying that in these exchanges of detailed papers, I don't really can comment on this particular case because you're referring to this paper. I was just able to comment generally. But, for this case, I think you need to ask Mr. Ng in terms of what's in his mind in terms of how the approach was taken; not from me because he's himself handling it directly. Not me.

Q Well, let me ask it this way. As of August 12, 1992, do you have any evidence that Mr. Don Oswald of NYNEX knew whether UIH was getting some kind of similar paper, whether UIH was in discussion with Wharf, or whether UIH may eventually end up being a partner with NYNEX?

A I don't know the state of affair on a day-by-day basis. I think the handling of this matter is by Mr. Ng.

Q And, same question with respect to UIH. As of August 18, 1992, do you have any evidence or any reason to believe that as of that date, UIH would know or have reason to know that Wharf's dealing with NYNEX on the same kind of terms, that Wharf's considering a partnership with NYNEX, and Wharf may wrap UIH and NYNEX together?

A My answer is the same as the previous answer.

Q It's all up to Stephen Ng, right?

A No, he is in charge of it. I'm not able to give you the up-to-date and the day-by-day progress of these matters and how these matters are handled in detail.

Q There's certainly no way to tell by looking at these joint venture papers that Wharf is talking to another party, is there?

A I couldn't tell from it.

Q Let me ask you to look--

MR. JENTES: Your Honor, if we're about ready to leave TX-339 which is the letter from Mr. Fung to Mr. Oswald, I'd ask in fairness that Mr. Chase read the second sentence in the first paragraph.

THE COURT: Read the whole paragraph.

MR. CHASE: Oh, okay, I'll be glad to.

THE COURT: All right.

Q (by Mr. Chase) Mr. Woo, are you ready?

A I'm listening.

Q I read, you listen. "Dear Don, pursuant to our discussions on Monday, please find attached a discussion document outlining our thoughts for the formation of a joint venture involving NYNEX and Wharf Cable. I intend for this document to form the basis of the memorandum of understanding that we aim to have signed by the end of this month formalizing the participation of all the strategic partners in Wharf Cable." Do you see that?

A Oh, that's very nice to see.

Q Do you see that?

A Yes.

Q Now, it doesn't say a word about UIH, does it?

A It didn't.

Q And, you didn't have language like that in the document that went to UIH, did you?

A No, not that was presented to me.

Q Now look, if you will, please, at Exhibit 331.

A 331.

Q That would be in the white book.

A Right.

Q Are you there?

A Yes.

Q Now, this is an internal NYNEX document that Mr. Duffy testified that he authored. Do you know who Mr. Duffy is?

A Yes.

Q Okay. And, he was NYNEX's main person on the ground in Hong Kong in that period of time?

A Yes.

Q Now look over, if you will, please, to Page 5.

A Yeah.

Q Are you there?

A Yes.

Q Now, in this memorandum, Mr. Duffy says, "Wharf is offering NYNEX a share in its cable tv consortium at no premium and the means to sell off our share if the telecommunications business plan does not materialize. Wharf is setting aside a share of the consortium for NYNEX until mid-September when it has to formalize the shareholder

agreement with its partners." The present shareholdings are, and it lists them. Do you see that?

A Yes.

Q And so, do you understand from this that Mr. Duffy understood that NYNEX was being invited into a Wharf/UIH/Fox/Hong Kong/Shanghai Bank consortium at that time?

A I don't know what's the content of the discussions nor do I understand Mr. Duffy's internal memo.

Q Look over, if you will, please, at Page 10 of this memo. Are you there?

A Page 10?

Q Yeah?

A Right.

Q Now, it says, "Approval request. Following our enabling strategy, NNS is first seeking approval to fund 25 per cent ownership in Wharf's cable consortium. Second, approval is needed to fund 40 per cent ownership in a telecom's consortium." Do you see that?

A Yes.

Q And so, it's obvious from this document, is it not, that Mr. Duffy understood two separate consortiums?

A I don't know how he thinks and how he formulates his proposals. I think this is their own internal proposal. How he arrived at that conclusion is not something that I can

really be very helpful. The wordings that he used in terms of his understandings is his understandings. It may not reflect a fact. For example, on this particular matter, I've had no chance to read this paper before. Certainly, his estimate of the present shareholdings of the four shareholders are incorrect because they were not shareholders. There were no agreements, there was no commitment to Fox, Hong Kong Bank, and all these matters. So, Mr. Chase, may I ask you to let me read this thing first before I can answer your questions? Otherwise, I'm not giving you a whole answer.

Q Well, I'll tell you what. I'm going to have to compromise with you because it's a long document. But, you can read it during the break and then I promise you I'll come back to it and see if you want to change any of your testimony.

A No, no, I'm fine. I just want to make sure that I understand in terms of the facts that's been presented and I don't know whether these facts are correct or not. So, to comment on somebody else's comment is very, very difficult for me.

Q Okay, fair enough. I'll tell you what. I'll keep you to Wharf documents. That will probably make life a lot easier for you. Why don't you turn to Exhibit 383. This is the one your counsel asked you about yesterday. It's a draft letter of intent. So, that would be probably--I'm sorry to do this to you--in the black book.

A I'm sorry, I can't seem to locate it.

Q Well, it's got to be in the black books unless there was a break--

A I'm sure it's here someplace.

Q There might have been a break-in last night.

A 383, yeah, here.

Q Someone came in and stole 383.

A No, it's here.

Q Okay. Now, do you recall testifying yesterday that this document was consistent with your authorization and this is a draft letter of intent among UIH, NYNEX, and Wharf? August 24, 1992; I believe it's been testified in this case that that's the first draft letter of intent with the three parties.

A Well, as I said yesterday, I said to counsel, in terms of the actual preparation of the papers, I was not involved. There were discussions that I had with Mr. Stephen Ng and I recorded that.

Q And, certainly, nothing that Mr. Ng would have done in this that would be inconsistent with Wharf policy; is that correct?

A Well, I think that I discussed with Mr. Ng the points that I thought should be discussed. And, you asked me about whether I was involved in the preparation of these documents; I was not.

Q No, I understand. I'm not going to ask you whether you were involved in the preparation of any.

A Yes, yes.

Q If I ever ask that question, you tell me that I just asked a bad question. I'm going to ask you whether you authorized it, participated in it, knew about it, but I'll never ask you if

you prepared it. But, look over at the first page of the draft letter of intent and look under corporate structure and shareholdings, please? Do you see that?

A Yes.

Q Now, that paragraph says, "If by the time of the proposed signing of the shareholder's agreement the necessary approvals to NYNEX acquiring its 20 per cent interest have not been obtained, Wharf will acquire an initial interest of 90 per cent on the basis that it will make 20 per cent available to NYNEX when such approvals have been obtained." Do you see that?

A Yes.

Q So, it was anticipated by this document that it's possible you would have Wharf owning 90 and UIH owning 10?

A Based on this document, maybe my best recollection would be probably a previous exhibit whereby Stephen Ng had proposed to me various options and that was one of the options that Mr. Ng asked me to consider which I rejected based on the memo marking that I had.

Q So--

A This could be a draft.

Q Well, this certainly is a draft and this is a draft of August 1992. It's the one that you've testified on direct is consistent with your instructions. I'm asking you whether that paragraph is consistent with your instruction.

A When I--

Q Wharf 90, UIH 10.

A What I said was that I discussed with Mr. Ng the points that I felt would be important and I did not read the content and the exact details of this particular--as long as Mr. Ng satisfied my overall requirements, yes, it is probably a document that is prepared by lawyers. But, I think that you asked me to read it. This particular paragraph that you're talking about, I can only refer to the previous testimonies I have made as far as the options that's been presented to me from Mr. Stephen Ng, and I can only say that this is probably one of many drafts that the lawyers have been asked to draft in case we chose either one of these options.

Q All right. So, this one is--I'm not sure what your answer is. Are you saying that this is authorized language or not authorized language?

A This is authorized language if I were to pick the option of a 90/10 which I did not pick.

Q Now, did you tell Mr. Ng that as of August 24, 1992 before he circulated it to the other parties?

A What I discussed with Mr. Ng was that when he presented the memo to me on the choice of the option, I remarked in terms of which option I preferred. I did not go into detail drafting except a few points that I would discuss with him overall. But, that's how it was conducted.

Q So, your answer being that this language is not what you would allow?

A No, that's the language if I had picked the 90/10 that would have been--

Q But, you didn't?

A I'm sorry?

Q But, you didn't.

A I know. Lawyers are often asked to draw up many different options so that they were ready for execution subject to client's final direction. And, this is probably one of the exercises that Herbert Smith entered into, but they need to await for the client's decision. Now, the client's decision is us in terms of Wharf Cable in terms of how we wish to structure the deal. The final decision on that was reflected in the discussion that Stephen and I had based on the memorandum that he showed me.

Q I'm still trying to find out what you're saying here. Is this language authorized or not?

A Can I answer that again? What I said was very clear. It is that this is a paper from the lawyer proposing one of the options that Mr. Stephen Ng had suggested I consider.

Q Let me ask you this, Mr. Woo. Are you aware of any draft letter of intent circulated during the August/September 1992 time period right up to the time of the bid that does not contain this very language that I'm pointing you to?

A My dealings and my working with Stephen Ng has been a very simple one. I'm aware that these letters of intent are being discussed and drafted. As I testified before, all letters of intent are subject to shareholder's approval. So, in other words, these letters of intent would be drafted. They would be presented to shareholders. The drafting of the letters of intents does not mean a commitment for the shareholder's to sign. We go through a process whereby these drafts would

be commented on and talked with by the different party who will be involved. Now, that was the process and the process--this, I see, is the process whereby it is being conducted, but that final process had to come back to each shareholder for the shareholders to approve.

Q Well, when Stephen Ng proposes this language, is he proposing something that it consistent or inconsistent with Wharf policy?

A He had proposed two alternatives for me to consider. He's insuring that in terms of being efficient, the languages for both alternatives are prepared by lawyers.

Q Let me ask you this, Mr. Woo. You've testified that he's proposing two sets of languages to be considered. Do you know if any language other than this was ever shown to UIH?

A I'm not aware of that.

Q And, when you chose your Option 1, let's talk about that for a second. Wharf, 100 per cent shareholding--

A Uh-huh.

Q --no UIH. As of the time of this memo that we're going to talk about in more detail, 484--you've got it there, right?

A Okay.

Q That's the one where you say Option 1, 100 per cent Wharf ownership, right?

A Yes.

Q And, that was at or about September 16, 1992; right?

A Around that time.

Q And, you would have thought that Mr. Ng would clearly get the message at least by that time, right?

MR. JENTES: Excuse me. Object; what message?

Q (by Mr. Chase) The message that Wharf would be 100 per cent owner, that UIH would not have any right?

A It depends on when this memo was executed and also when my remarks are made.

Q Well, I believe your counsel pointed out yesterday it was in--look at Exhibit 473, please? Exhibit 473 is dated September 16, 1992.

A 470--

Q 473?

A Yes.

Q And, 473 is dated September 16, 1992.

A Yes.

Q And, 484 is your markup of Exhibit 473, right?

A It's a markup over an attached memo. The attached memo doesn't have a date on it, I'm afraid. So, I'm not sure that the--

Q The attached memo is 473, right? Do you want to compare the language?

A The attachment was 473, yes.

Q Yes, and that's September 16?

A No. The covering memo is September 16; the attached memo is not dated.

Q Well, the attached memo was transmitted to you on September 16, right?

A I don't know. I mean, I'm not--I don't have a record.

Q Well, that's what it says, doesn't it? Look at it. Look at 473.

A 473. It says the covering memo is 16 September.

Q All right. Right. Look at the memo that's attached to 473. That's the pro and cons memo, right?

A I don't know which memo that's referred to.

Q Look at 484 and look at 473. 484 is your markup of 473, right?

A Well, I'm sorry, Mr. Chase. All I can say is that I don't know the date of the attachment of this paper. The attachment of the paper that I remarked on has no date. Now, you are assuming that the attachment and the covering memo is of the same date. I just don't know.

Q Well, Mr. Woo, these documents are produced by your company. And, if you look at 473--and I guess we're going

to take some time with this. You look at 473 and you see the little stamp down in the lower right which says WCO1098?

A Yes.

Q Wharf Cable, produced by your company?

A Yes.

Q Confidential?

A Yes.

Q September 16, 1992 and it says, "In our meeting yesterday, we considered briefly the pros and cons of including UIH as an equity partner." Do you see that?

A Yes.

Q "Now, I was asked to give this matter more thought and to respond. I have no done so and enclosed a note for your review." Do you see that?

A Yes.

Q Now, if you flip the page, you see a document called Wharf Cable Partnership Considerations.

A That's right.

Q And, that appears to be the document that was transmitted to you by Mr. Ng on September 16, 1992. Correct?

A Yes.

Q And, that means the date of this memo has to be at or before September 16, 1992.

A I'm just pointing out that there's no date on it. That's all I'm saying. My remark on that, I don't know when I did it because it's so long ago. That's all I'm trying to say, sir.

Q Well, let's try this. Let me ask you to look at Exhibit 498. This is a September 19, 1992 letter from your lawyer to Mr. Fung transmitting a draft letter of intent.

A Which exhibit, please?

Q Exhibit 498 and that would probably be in the white book. Do you have it, Mr. Woo?

A I don't have that, I'm sorry.

Q Okay. I guess it's in nobody's book. 498 is a September 19 letter from Mr. Bellis to Mr. Fung transmitting a draft memorandum of understanding, right?

A Yes.

Q And, that shows on there copies to Mr. Van Demark of NYNEX and Ms. Norman of UIH and Mr. Pittman of UIH. Correct?

A Yes.

Q All right. Now, let's look at the draft of September 19, 1992. Now, we've moved almost a month from the August 24, 1992 draft and we've now come to a period of time after the time you say you chose Option 1. This is the language going to UIH.

A I think that, Mr. Chase, I will answer this question this way. In terms of the drafting and the handling of detail documents like these, it is very hard for me to give you any precise recollection because I was not involved in the handling of this. My overall discussions with Mr. Ng has been very clearly laid out up to now and I can tell you that not only with this transaction, but with all other transactions that I handle, the executives tend to handle what we called the drafting sessions and the preparations of documents. But, having said that, the guiding notes that I would refer to are the memos where I make remarks and where decisions were indicated. So, I really can't help you in terms of what happened, what people's thinking were. I can only say that this is the way that I can only help you by saying that that's the fact.

Q Oh, I understand that you're not involved in the drafting process and I'm not asking you about the drafting process. See, here's our problem, Mr. Woo. You have these conversations with Mr. Ng, right?

A Yes.

Q And then, Mr. Ng talks to UIH, right?

A Yes.

Q But, you don't talk to UIH?

A I don't talk to UIH.

Q Okay.

A Yes.

Q So, what I've got to ask you is that when Mr. Ng sends this document down to UIH drafted by Wharf lawyers saying basically the same 90/10--Wharf 90, UIH 10--is that consistent with Wharf policy at that time?

A It is a preparation to--I can only say that it's a preparation that Stephen Ng had made. I have not discussed it with him in terms of these detailed preparations. My workings with Mr. Ng has been very, very clear in terms of the guidelines that I gave him. He, as an executive, always intends to look at opportunities for options and so forth. But, he realizes that all these discussions and matters comes back to a concrete form whereby it gets--can be approvable by me or by the board. So, this is his job. He prepares all these documents. The overall process is authorized in terms of discussions with our joint venture partner potentials, Exchange views, to establish the parameters where we can or we cannot do. You know, that's his job. And, once these documents come to me in the final form, that's when the board will consider them.

Q All right. My question is is this language proposed by Mr. Ng to UIH on September 19, 1992 consistent or inconsistent with Wharf policy at that time?

A At that point in time, he and I never discussed in terms of his own actions. As far as this particular drafting exercise is concerned. But, again, I will say that my discussions with him has always been on the line that we've discussed before in terms of the principles and so forth.

Q And, is this one of the principles that you told him to communicate to UIH; what's contained on this September 19, 1992 draft? 90/10, Wharf/UIH.

A No.

Q Now, let me ask you to look at Exhibit 470. That would probably be in the white book.

A What's the number again?

Q 470.

A White book?

Q White book.

A 470, here we go.

Q All right. This is another transmittal from your lawyers, Herbert Smith, to Emil Fung. See that?

A Yes.

Q Okay. And, it's a transmittal of a shareholder's agreement. Do you see that?

A Yes.

Q Now, the draft shareholder's agreement that's being transmitted--and this is September 16, 1992?

A Yes.

Q What's being transmitted is Wharf Communications Investment Limited, UIH, and Cable Network Communications Limited shareholder's agreement, right?

A Yes.

Q Now, Wharf Communications and Cable Network Communications are affiliated companies, right?

A Yes.

Q In other words, Cable Network is owned by Wharf Communications?

A Yes.

Q So, they're both Wharf companies?

A Uh-huh.

Q Yes?

A Yes.

Q And, there's no NYNEX here?

A No, no NYNEX.

Q Now, do you remember seeing this in mid-September 1992?

A No.

Q Is this consistent with the instructions you had given Mr. Ng?

A No.

Q Were you aware that this was going on?

A No.

Q Seeing it now, does it bother you?

A No.

Q It doesn't bother you that Mr. Ng is sending out shareholder's agreements that you wouldn't authorize?

A No.

Q So, whatever Mr.--

A They're draft shareholder's agreements.

Q So, whatever Mr. Ng wants to send out as a draft shareholder's agreement doesn't matter?

A No, I think that that's not the context that I would put. I believe that Mr. Ng is an executive. He's looking at the situation because, remember, this is September 15. We're talking about submitting a bid on September 30. Now, Stephen Ng's ideas, I presume from these papers which was, of course, translated in terms of the various memos to me, was that in case I would decide because I would like to have one partner to go rather than have no partners to go, he would have the documentations ready for me to approve. This is fairly standard practice for my executives because many times we would come into the last minute and you know that we're there to be a joint venture. The September 30 submission must contain full documentations. Now, it would be impossible if I said to Stephen--suddenly, I say, look, NYNEX is not on, but I like to just do it with UIH for whatever reason. We may at that time change policy. He'll say to me, he'll say, sorry, I can't do it because to get all this paperwork done, it's going to take weeks because we all know how legal work takes time. I think that he's trying to insure that were I to choose an alterative which he thought that we can consider, but he respects my final decision on which way we should go. So, what he's trying to do is to insure that (a) on one hand, it is a 100 per cent bid. He did not need to prepare any documentation because Wharf Cable

under Wharf basically submits that it's 100 per cent owned by us. But, if I would say to Stephen, look, I changed my mind because the pressure seems to be on. We need to have a partner in there. What is he going to do? He can't say to me, sorry, I can't get it ready for you. Then, I say, well, wait a minute, that's your job. You're supposed to give me all the flexibility until the last minute. And, being a very responsible executive, he insures that these paperwork are done. Now, you know, it's important that we make sure that the time is controlled because the last thing we want to do is to miss the September 30 deadline. So, the questions you asked me would be in that context.

Q Well, let's talk about that context for a minute. You just went through a whole thought process here saying that Mr. Ng would have prepared this up as some kind of a contingency plan in case you decided to go with a UIH ownership. Right?

A I think that he didn't know what I'm going to decide at the end.

Q So, you think that he prepared this or had this prepared by your lawyers as a contingency plan?

A You're asking me the context and I don't want to presume. I don't want to speculate. All I'm saying that the question that you asked me, I'd say that this is what I thought could be the case. But, I was not involved--

Q Is that what you thought?

A I don't know. I mean, I thought that this could be the case.

Q Well, let me ask you this.

A But, my dealings with Mr. Stephen Ng is on a basis that I described.

Q So, you thought at the time you saw this that this could be the reason why he's doing it?

A I see it today. I have not seen it before.

MR. JENTES: I object, Your Honor. He testified he didn't see it.

MR. CHASE: All right. Let me rephrase the question.

THE COURT: All right. Sustained.

Q (by Mr. Chase) You didn't see it?

A I did not see it. I mentioned that before.

Q You had no idea he was even preparing this?

A He and I did not discuss detail like this.

Q You did not know he was preparing a shareholder agreement for just UIH?

A I have an idea in terms of the approaches that we are approaching a three-party joint venture, and in the absence of a three-party joint venture, there are different options that he would like me to consider. That is the context of the overall situation at that time. But, the work is carried out by him; he's looking for options.

Q All right. And, one of those options is a 90/10, Wharf/UIH ownership?

A In case we were to so decide.

Q All right. Do you know if Mr. Ng shared with UIH any of the thought process you just went through here on the witness stand; that this is some kind of a contingency plan?

A I think you have to ask Mr. Ng. I cannot speak for him.

Q We will, but I'm asking what your understanding was. Was your understanding that Mr. Ng was explaining all this to UIH?

A At that time--like any time when there's a bid submission date, everybody is very busy in preparing the papers and necessary submissions and I think that--if you ask me what I thought at that time, what Stephen Ng thought, I don't think that I was thinking in that way.

Q Well, if you go back to August 11, remember, I asked you about that August 11 board meeting where you said it was clear that any time you see memorandum of understanding or anything like that, you've got to think UIH and NYNEX can't be one without the other. Right?

A That's the final memorandum that I would want to see in front of my desk if all the things work out the way we want to.

Q Mr. Ng, you thought, fully understood all of this?

A Yes.

Q And, he would never not carry out his chairman's instructions?

A Well, he would make sure that that particular option is there always for me to consider.

Q All right. Now, in this draft shareholder's agreement that was sent by your lawyers to UIH, look at Paragraph 17.

A Yes.

Q Do you see that Paragraph 17 there where it says "technical cooperation"?

A Yes.

Q Arrangements with NYNEX?

A Yes.

Q Who was not to be a party to this agreement?

A Yes.

Q But, there would be a technical cooperation with just NYNEX; do you see that?

A Yes, I see that.

Q And, that's what was being proposed by Mr. Ng and your lawyers to UIH in mid-september 1992?

MR. JENTES: Excuse me, Your Honor. I'd only make a note that this document didn't even go to UIH at least as far as the document shows. This is between Mr. Bellis and Mr. Fung and the people at NYNEX.

MR. CHASE: Well, now that Mr. Jentes has testified, I think we can review the record of Mr. Fries' testimony who said he did see it.

MR. JENTES: Well, I'm not--I'm only directing to the face of the document.

THE COURT: Well, I think it's out of order. Overruled.

Q (by Mr. Chase) Okay. Regardless of who saw it and Mr. Fries' testimony will say what it says, this is what's being proposed in mid-September 1992; right?

A I don't know whether it's being proposed or not.

Q It's sent by your lawyers and your Mr. Ng to people to consider?

A I don't know whether it's proposed or not. You'd have to ask Mr. Stephen Ng.

Q We will. But, first, we have to talk to you. Otherwise, we'll have to keep here until after we talk to him and I don't think you want to do that.

A Well, I got bumped up on the flight. So, I mean, I may not get out tonight anyway. But, I don't want to hold you up.

Q I'm not going anywhere. Mr. Woo, let me--am I, Your Honor?

THE COURT: Well, I hope eventually you will.

MR. CHASE: I've found that this is a nice, warm place to be. There's nice people here, some of which I--nothing.

Q (by Mr. Chase) Mr. Woo, let's talk about NYNEX

A Yes.

Q All right. Now, look at Exhibit 297, please?

A White book?

Q Yeah.

A I have 296 and 290, but not 296.

Q 297 is what I'm talking--

A Oh, 297, I have.

Q All right. Look please, if you will, at this document. It's July 17, 1992 from Mr. Fung to Mr. Ng regarding NYNEX strategy meeting. See that?

A Yes.

Q Now, were you aware in mid July 1992 that NYNEX was considering not investing in the cable project?

A I don't recollect specifically. It could be the case. I'd have to refresh my memory, but I can't remember specific situations as they develop.

Q Does this document refresh your recollection?

A Not particularly. This is between Mr. Emil Fung and Stephen Ng.

Q Right.

A I'm not sure whether it's copied to me. I really can't offer you too much on that.

Q This is something that Mr. Ng would have made you aware of if it were happening in mid-July 1992?

A Possible.

Q Now look, if you will, over on the second page.

A Yeah.

Q It talks about the last paragraph. It says, "With respect to NYNEX's lack of interest in the cable investment, we have two choices." Do you see that?

A Yes.

Q Now, I'm going to drop down to the bottom of that paragraph where I've highlighted and you can look up on the screen where I've done that. See where the word "from a Wharf cable image perspective"?

A Yes.

Q It says, "From a Wharf Cable image perspective, we can minimize any perceived weakness and are not possessing a signed on Tellco partner by designating NYNEX as a telecom application consultant to our cable project. The cable partners should not have trouble with this so long as the consulting arrangements are not onerous. Another option is to bring in TCI as part of UIH Investment to benefit from their telecom and alternate access expertise." Do you see that?

A Yes.

Q Was it your understanding that this was being considered in mid-July 1992 by your staff?

A They may be considering that based on this memo.

Q And, that's having NYNEX come in as a consultant if it was acceptable to the cable tv partners?

A This is being discussed by the staff within Wharf Cable.

Q Yes, I see that. Was it brought to your attention?

A I can't recollect any specific proposal of having not a three-party situation or a two-party joint venture where I agreed or not agreed.

Q Now, this clearly anticipates that a joint venture without NYNEX, right?

A This is Mr. Emil Fung's comment.

Q I understand that. And, that's what this seems to anticipate, doesn't it?

A This is what Mr. Emil Fung's comment is; not mine.
Q I didn't ask what if it was yours. I'm asking about what this appears to anticipate. That's what Mr. Fung is saying, right?

A That's what Mr. Fung is saying, yes.

Q Now look, if you will, please at Exhibit 300.

A Yes.

Q 300 is a Wharf Communications Investment Limited weekly activity report by Emil Fung of July 18, 1992. Right?

A Yes.

Q Now, Mr. Fung reported directly to Mr. Ng, right?

A That's correct.

Q And, what was his title; do you recall?

A No.

Q Wasn't he the chief financial officer of Wharf Cable?

A I don't recall specific titles for any of the staffs.

Q And, you know, though, that he was directly involved in talking to your joint venture partners, UIH and NYNEX?

A I'm aware that he's reporting to Stephen and assisting Stephen on work relating to joint venture partners.

Q And, from time to time, you communicated directly with Mr. Fung on that subject?

A No.

Q Never?

A I don't recall talking to him about specific issues. I may run into him, but to say that I've never talked to him is not something I would like to say. But, certainly, I don't see him as a direct report to talk about business transactions, but I

may see him from time-to-time. But, not on a regular report basis.

Q Well, I didn't ask about a direct report. I've asked from the time of, say, summer of '92 to the middle of '94, did you have direct communications with Mr. Fung on the cable tv issues?

A I may have, but I really don't--I can't really recollect specific incidents.

Q Let's look at this weekly activity report of the Wharf Communications Investment Limited group. This is printed very poorly. Let me start up here in the beginning of the yellow where it says, "UIH confirms discussions between Hutchinson and TCI Time Warner." Do you see that?

A Yes.

Q Now, that's what I was asking you about earlier today as to whether it was rumored that Hutchinson was going to be linking up with TCI Time-warner for purposes of the bid?

A Yes.

Q And, were you aware of it at or about the time of July 18, 1992?

A Well, my answer is that there are rumors here in the market, yes, but as I say, didn't have any factual proof.

Q All right. You were aware of the rumors, though?

A I guess so, yes.

Q And, TCI Time Warner linking up with Hutchinson would be viewed as a very formidable opponent for that bid. Right?

A Well, I believe that any consortium that would be formed would be a formidable opponent, yes.

Q Well, particularly one with TCI and Time Warner?

A I would not particularly subscribe to that particular comment because they have no local programming.

Q You tried to get TCI Time Warner to work with you?

A Not because they have local programming.

Q You say you didn't try to get them or you did?

A I said that we tried to get them in terms of the cable operational backgrounds and certain programming in terms of international programming, but not for local programming.

Q Well, I didn't say for local programming. You tried to get them to be your cable partner?

A Yes, one of the prospects.

Q Okay. Now, it goes on to say, "NYNEX indicated that cable was presently not of interest." Do you see that?

A Was that consistent with your understanding at that time?

Q This is a report from Mr. Fung to Mr. Ng. At that particular time, I don't really have a blow-by-blow update of

my understanding of the development of the situation. I may have heard it, but I'm not sure.

Q As I understand your testimony in this Court, you were waltzing and wining and dining NYNEX for over a year to become your partner; weren't you?

A No, I made trips to New York to see their chairman, but my personal contacts with NYNEX is not at all the way you describe it. I do not wine and dine NYNEX.

Q I'm sorry, I used the word "you" incorrectly. I'm talking about Wharf. Wharf wanted NYNEX to be its telecom partner?

A Stephen at his level of working with the NYNEX people, they are in constant contact and keeping liaison.

Q You say Stephen at his level. Are you implying that Stephen wanted NYNEX, but Wharf didn't?

A No, no, no. You're talking about wining and dining and the contacts.

Q I'm off the wining, I'm off the dining, I'm off the waltzing--

A Well, I'm saying that the contacts and the relationship building is done by Stephen and his associates or his colleagues. That's what I meant. You're making sort of that I'm doing all the work; I'm not. I mean, he's the one that's responsible.

Q I'm back from dinner and I back from the waltz. I want to talk about what Wharf wanted. Wharf wanted NYNEX as its telecom partner?

A Right.

Q And, it wanted NYNEX very much as its telecom partner?

A Right.

Q And, it wanted NYNEX to invest in cable television?

A That's correct.

Q And, it wanted NYNEX to be part of this whole thing, right?

A Yes.

Q And, on September 18, 1992, Mr. Fung reports to Ng that NYNEX indicated that--I mean, July, I'm sorry, 18, 1992, NYNEX indicated that cable was presently not of interest. Do you see that?

A Is there any possibility that Mr. Ng would not have brought that to your immediate attention?

A Well, I think that I--you asked me is there any possibilities. I think if I were Mr. Ng, the first thing he would do, he would check whether Mr. Emil Fung's statement is correct or not. Right now, you're talking about a statement by Mr. Fung. He may for his own reason arrive at that particular conclusion, but I believe that whether Mr. Ng would immediately take action to tell me, oh, by the way, Emil Fung feels a certain way or he would investigate himself. He would talk with NYNEX contacts that he worked with and come to his own conclusion. And, when he comes to his own conclusion, he will relay to me his feelings.

Q All right. You'd expect your good--your managing director to do something like that?

A He would investigate and come back to me if he was the one that--the information that I need.

Q Why don't you look over at Exhibit 314.

A Yes.

Q Same book. This is a Wharf Communications Investment Limited weekly activity report from Emil Fung again, July 25, 1992. Now, we're a week later, right?

A That's correct.

Q And, if you look down under Wharf Cable partners, it says, "Strong support maintained by UIH and Fox. Discuss potential pullout of NYNEX. No real concerns." Do you see that?

A Yes.

Q So, now, we've had a week go by. You knew at this time, didn't you, that NYNEX was pulling out?

A I need to refer to my notes with Stephen Ng as to when we discussed any matters relating to NYNEX pulling out.

Q Do you think there's any possibility that in the July 18-July 25 time frame with this information coming from Wharf that Mr. Ng would not have presented this to you?

A Well, I believe, as I said before, Mr. Ng--this is a report between Mr. Emil Fung and Mr. Ng. I don't believe that Mr. Ng is a mailbox. I don't think he's a mailbox. I think he

would analyze, he would investigate, he would satisfy himself in terms of the state of affair before he talked with me. So, I really can't be very helpful in terms of a memo from Mr. Emil Fung to Mr. Stephen Ng.

Q Do you deny knowing about this at this time period?

A I may have, but I don't recollect any specific time or specific incidents.

Q Where is states "no real concerns", does that accurately reflect Wharf's view at the time?

A I don't know what Mr. Fung means.

Q Well, I'm asking you. Would Wharf be concerned at that tine about a NYNEX pullout?

A When you say Wharf, you mean me or you mean the company or you mean Mr. Stephen Ng?

Q I'm talking about the company through its officers, and at this moment, you.

A Yes, as far as I'm concerned, it depends on what Stephen and I talk about, and I don't have any immediate record in terms of what he and I talked about on this particular subject. And, as far--

A Well, I haven't seen anything either. Have you got anything in mind that would refresh you?

A I don't. That's why I can't recollect.

Q Okay. So, you just don't remember?

A I don't remember. I mean, these memos are certainly the first time I've seen them.

Q You say this is the first time you've seen this?

A Probably because the memo is from Mr. Emil Fung and Mr. Ng.

Q All right. Forget about the memo for a second. Let me go back to my original question. Is there any possibility that if NYNEX was pulling out, Mr. Ng would not have brought that to your attention?

A Well, if NYNEX had given a definitive decision saying that they're out, I'm sure that I would have been informed by Mr. Ng.

Q Let's look over at Exhibit 315.

A 3--

Q Exhibit 315; that's Wharf Communication Investment Limited coordination meeting, July 27, 1992. Do you see that?

A Yes. Right.

Q Attached to this are notes of a meeting from July 20, 1992. The only way I can explain why that is is because that's the way they were produced to us.

A Right.

Q Do you see that?

A (No audible response.)

Q And, it says Mr. Stephen Ng and Mr. Fung are both at that meeting; right?

A Right.

Q And, if you look over two more pages under strategic alliances, do you see the discussion about NYNEX? Do you see that?

A I'm sorry, which one is that?

Q It's WC06896.

A 896.

Q Are you there?

A Yeah.

Q All right. Now, it talks about, "It is possible that NYNEX may lose interest if GSM is not successful." Do you see that?

A Yes.

Q Gsm is the cellular bid, right?

A That's correct.

Q And, that was not successful, right?

A That was not successful.

Q And, you learned that at or about this time, mid-July 1992?

A Based on the record.

Q All right. Look at 3.1.2. "Future arrangements may not be a strategic partnership one. NYNEX may charge WCIL a consultancy fee and allocate to future equity participation." Do you see that?

A Yes.

Q Does that accurately reflect your understanding of somebody that's not a strategic partner; they charge a consulting fee?

A That's correct, the memo here basically spelled out a possibility and as we know, in terms of the so-called strategic partnership, it's a very broadly used term. It can be equity partners. It can be service partners. It can be advice. It can be networking; many, many things. So I think that we should--I feel that in terms of the terms that we use I think that NYNEX has been identified by us as a strategic partner. And they can do many things for us, not only equity. That was the previous definition that I understood to be.

Q Well, you look at the way Mr. Fung has used it here and I understand that this is--or at least the way these notes reflect, at the meeting where Mr. Fung and Mr. Ng--

A Yes.

Q --are present. And it says may not be a strategic partnership because they're going to charge you a consultancy fee.

A That's a note that's been prepared by some of the management.

Q And you don't agree with that?

A I think that in my sense reports are prepared by many people and they use terms in terms of their own definitions or their own thoughts. This is understandable and so I would not take any one definition as being the finite definition. It's fairly broad and flexible of usage of various terms. So that's what--how--how I would look at it.

Q Now, these people in your organization that used these various terms in various ways, these are the people that are communicating with UIH; right?

A Yes.

Q Not you?

A No.

Q Now, look down at the 3.1.6.

A Yes.

Q You there?

A Yes.

Q It was agreed that NYNEX adds no value to Wharf Cable; you see that?

A Yes, that's what the note said.

Q Now, this note is an internal Wharf document; right? This is not a UIH document?

A No.

Q It's a Wharf document?

A It's a Wharf document.

Q There's no UIH representatives at this meeting; right?

A No.

Q Now, did you agree that NYNEX added no value to Wharf Cable?

A Do I agree?

Q Did you?

A Did I agree?

Q Yes.

A No, strategically I said very important that we have NYNEX as a strategic partner if we can. I think that my overriding principal of having NYNEX as my dominant partner is the main principal that I adopt. Now, the telecom partner as being cornerstone of our partnership is something that I would maintain.

And I think as far as NYNEX concerned, my own opinion is that NYNEX has value to add to us because not only that they are telecom experts, they also have work in the U. K. in terms of combine that work with telecom and cable television, which is very, very unusual because with the exception of probably U.S. West and NYNEX, no other Bell company is with a similar type of experience. And furthermore, the U.S. cable companies, most of them don't have what I call a joint telecom and cable television experience.

So if you ask me my opinion, I would disagree with this comment totally. And I think that NYNEX has value to add to Wharf Cable.

Q Was it reported to you by Mr. Ng or anybody else that the meeting said that it was agreed that NYNEX adds no value to Wharf Cable?

A I did not receive any recommendation that NYNEX adds no value to Wharf Cable.

Q This would be a view held by others in your organization?

A It's the view--I mean, it's a note that's being addressed, I don't know who approved the notes and whether the notes has been approved or is just a set of notes drafted by one individual without circulating to the other individuals for their agreement. So I would qualify the status of this memo in that sense.

Q I believe the testimony will show that Mr. Stephen Ng approved these notes. Do you have any reason to believe that's not true?

A I don't know.

Q Now, you don't share the view--or you didn't share the view or you didn't share the view that NYNEX adds no value to Wharf Cable?

A I'm of the view that NYNEX would be of value to Wharf Cable.

Q But you acknowledge that others in your organization had the view that they added no value?

A No, I don't acknowledge that our views in our company is universal. I think different people have different views and that's understandable.

Q And those different people that would say NYNEX adds no value, these would be the people that would be talking to UIH; right?

A Some of them would be.

Q Now, it goes on to say investors like Fox and UIH would actually prefer not to have NYNEX as partners as they were not keen on the telecoms business; do you see that?

A Yes.

Q What that your understanding, that UIH at this time was not keen on the telecoms business?

A Well, I think that, as I discussed, it's understandable why cable companies don't like telephone companies. And that's precisely the reason that I like to have a three-party joint venture whereby the telecom aspect and the cable aspects would give--give me the dominant or the majority shareholders a really reasonable balance. So it does not surprise me.

Q I'm asking you did you understand at that time or did you believe at that time that UIH was not keen on the telecoms business?

A I don't--

MR. JENTES: Excuse me, Your Honor. I thought he just answered that question.

THE COURT: No, he didn't. He answered it in the present. He's asking for him at that time.

MR. JENTES: Oh, okay.

THE WITNESS: Question, please?

Q (by Mr. Chase) At that time did you understand that UIH was not keen on the telecoms business? Was that your belief or understanding at that time?

A My personal understanding or my personal thinking on that at that time is that cable companies in general do not like to have telecom companies there. So I did not presume that UIH would be different.

Q All right. So at the time of August 11 and August 24, when Wcil is sitting there talking about UIH becoming a partner, you're of the understanding and belief that they're not going to be keen on the telecoms business?

A No. All I'm saying--can I answer that again? At that time and in my belief is always that the--any partner that's going to come in to a three-party situation would recognize that the telecom partnership is an important partnership for us. This is a term that we'll be basically maintaining and as far so we are concerned this is the package deal that we would like to consider.

Q When you say a package deal, did you instruct Mr. Ng that the only way he could deal with UIH was if they did cable and telecom?

A The overall guidance that I've given to Mr. Stephen Ng is that I would like to see a joint venture with telecom partner as a dominant partner and the cable television to come in,

taking a smaller share with a combined consortium doing the dual project that we envisage.

Q And the cable partner would have to invest in the telecom side, that was one of your requirements?

A That would be envisaged for the overall company.

Q That was a requirement that you told Mr. Ng about?

A That I believe is the case for the dual project objectives.

Q And that--that requirement never changed in your mind?

A That is an overall guidance I gave him.

Q And that guidance stayed in your mind all the way up through 1994?

A That is correct.

Q Now, it says in here after it talks about NYNEX, it says investors like Fox and UIH would actually prefer not to have NYNEX as--oh, I read that part. I'm sorry.

3.2. UIH is still very enthusiastic about the project. Do you see that?

A Yes.

Q Was there discussion about it--at this time about UIH's views of the project in light of NYNEX's potential pullout?

A I can't recollect any particular discussions.

Q Did you discuss with Mr. Ng the effect that NYNEX's pullout would have on UIH's view of the project?

A When?

Q At or about this time.

A I'm sorry. I don't understand the question.

Q Prior to the bid.

A Prior to the bid. Well, UIH was never a shareholder prior to the bid, so--

Q I didn't say that.

A --they can't pull out of a shareholding, you know, situation.

Q Listen to my question.

A Yes.

Q Did you discuss with Mr. Ng prior to the bid the effect that NYNEX's pullout of the project would have on UIH's interest?

A I can't remember specific discussions on that.

Q Were you concerned about it?

A I can't remember being concerned or not at that time.

Q Can you remember anything about NYNEX's pullout and the effect it would have on UIH?

A I can't--I don't understand the question at all.

Q Well, your company understood NYNEX was pulling our or potentially pulling out in the summer of '92.

A Based on the records here.

Q Do you recall anything about the effect that had on your thinking about what effect that would have on UIH?

A My--my knowledge from Stephen Ng is NYNEX is looking at the situation, at present times they're enthusiastic, things are moving faster; other times it's going slower, but the general view is that they would--this is a very, very broad general view, the only specific time spots that I can remember is that they're going towards investigating the possibility of investing in this particular venture. And we're waiting for their corporate process to take place. And the corporate process was taking place in certain stance and my understandings are based on that particular framework.

Q So you knew--

A But I cannot--I cannot answer the question that you are talking about.

Q All right. Let me ask it more generally. Prior to bid you knew that NYNEX was up and down in terms of whether it was going to participate?

A Well, there are--there are occasions that we talk about maybe the--the NYNEX side of the activities slow down little bit and there are other times where they are going towards the board approval process. Stephen keep me informed with regard to that. And knowing corporate processes of major corporates, I'm not totally sort of

surprised by it. And my comments would be that let's keep--continue to work with NYNEX and to see if there's anything that we can do to insure that they're comfortable with the information. And that's the context that I been working.

Q And you gave him no particular instruction or no instruction at all as to what he was to tell UIH with respect to NYNEX's interest?

A I cannot recollect any particular specific instruction I gave him on these matters.

Q Or what NYNEX's interest or lack of interest would have to do with UIH's right to invest in the project?

A I gave Stephen the general comments that I gave before. And if I repeat it, I think the--everybody heard it again, but those are the general, broad guidelines I gave Stephen. And these were the guidelines he's working on.

MR. CHASE: Your Honor, this is probably a good time for the afternoon.

THE COURT: Okay. Take a break now.

(2:58 p.m.-Jury excused.)

(3:00 p.m.-Recess accordingly.)

(At 3:25 p.m. on March 18, 1997, with counsel for the parties present and the jury present, the following proceedings were had:)

THE COURT: Go ahead, please.

MR. CHASE: It just occurred to me, Your Honor, that the jury may view us as a still life. We're standing here like this when they leave; we're standing here like this when they come back.

(Laughter)

THE COURT: We don't move. If they view you as a still life, it is certainly not one by Van Gogh.

(Laughter)

MR. CHASE: That's because I have both my ears.

(Laughter)

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Woo, let me talk to you about the mid-September 1992 time period. And we're getting close to the bid. And I'll ask you to take out Exhibit 465. This is--you'll find it in the white binder and I believe this is also in the jury book, but we're going to have it up on wide screen.

You see this document? This is entitled Wharf Cable Bid Case Presentation to the Board, September 15, 1992.

A Yes.

Q All right. And Mr. Ng would be the one making this presentation, I believe you testified?

A Yes.

Q Mr. Ng was thoroughly familiar with all of your policies regarding having to have at least two partners and partners having to have the money?

A He understands my guidance.

Q Okay. Now, this, of course, would be a meeting of just the Wharf people, there's no UIH or NYNEX people present at this meeting; right?

A Right.

Q Now, let me--let me take you through this a little bit. Let's talk about this. Now, the first--if you turn to page 4 of the document where it says, "Competitive Overview." Are you there?

A I see the screen.

Q All right. You want to work off the screen? Okay. Might be easier.

Competitive Overview. Bid competition. Hutch Vision, Time Warner, TCI, Comcast. That's what I was referring to earlier; right? Yes?

A Yes.

Q Well, certainly by now it's brought to your attention that there may be a consortium of Hutch, Time Warner and TCI and Comcast; right?

A Yes.

Q And that--well, tell us a little bit about Hutch Vision--Hutch. The name of that company is Hutchinson Wam Po, isn't it?

A Hutchinson Wam Po, yes.

Q And tell us a little bit about Hutchinson Wam Po. What's Hutchinson Wam Po?

A It's a company in properties, in telecommunications, in retail stores, chain stores, in container terminals.

Q It's a huge company; isn't it?

A It's a conglomerate.

Q It's--it's like Wharf?

A We're not--no, exactly the same business, but we are both conglomerates.

Q Big companies?

A Large corporates in Hong Kong, yeah.

Q And--

A Public company, too.

Q Okay. And Hutchinson Wam Po, are they bigger than Wharf or smaller?

A Yes, they are bigger than us.

Q And Hutchinson Wam Po owns Star Television; right?

A At that time probably already transferred to Murdoch. I don't know the timing. I'm sorry.

Q All right. And Hutch was your primary competitor at the time of HKCC; right?

A That's right.

Q And Hutch has been an arch rival of Wharf, has it not?

A On television, yes.

Q In many aspects of business; correct?

A The property side it's they're parents.

Q You mean a parent corporation?

A A parent corporation. Not--

Q Okay.

A --Hutchinson itself in terms of property.

Q All right. So at the time of this--at this bid presentation, these are your potential rivals and Hutch, Time Warner, TCI and Comcast lining up as number one; right?

A On the list?

Q Well, they were certainly number one in your mind of rivals, weren't they?

A They're very rival that we note, yes.

Q Now, if you'll turn over to--let me ask you to go to page 20 of the document where it talks about partnership issues. See that?

A Yes.

Q Now, it has NYNEX and UIH split out differently, doesn't it?

A Yes.

Q And NYNEX is clearly anticipated for purposes of this presentation to be a non-equity partner at the time of the bid; right?

A I believe this is to update us in terms of the state of affairs at that point in time.

Q And at that point in time, Mr. Ng is telling you that it's anticipated that NYNEX is to be a non-equity partner and to have a technical cooperation agreement; right?

A That's one of the propositions.

Q That's what he's telling you right here in this presentation.

A That's one of the propositions.

Q And this is the presentation that's going to be the last full-blown presentation before the bid; right?

A At that point in time that was scheduled, but it was not envisaged whether there would be another bid presentation or not.

Q This is September 15th; your bid's due in two weeks; right?

A Yes.

Q All right. Now, at the same time that NYNEX is being proposed as a non-equity partner with a technical cooperation agreement, UIH is being proposed as a ten percent equity partner and interested in more, not a balance sheet company and it says default provisions; do you see that?

A Yes.

Q Clearly this document anticipates a different treatment of UIH and NYNEX; right?

A This document has a proposition in mind.

Q And this document has history, doesn't it?

A This document is a proposal, a possible proposal from management.

Q And you understood, did you not, that this document reflected the conversations that Mr. Ng had been having with UIH and with NYNEX up to this point in time?

A On a non-committal basis for discussion purposes.

Q Well, let's see if I understand what you just told me. You understood that Mr. Ng was talking to UIH and NYNEX along the lines set forth in this document; correct?

A My understanding from looking at this paper based on the presentation is that a proposition on those lines is

possible for the Board to consider and the Board and the company has made no commitment to anybody.

Q Did you understand that this would reflect Mr. Ng's best thinking and the state of the negotiations as of September 15, 1992?

A I would think that this reflects Mr. Ng's state of activities in preparing a proposal for the Board to consider.

Q Now did--

A And that proposal does not bind the Board.

Q Well, you certainly didn't tell anybody at UIH that, did you?

A I don't think anybody would misunderstand that these matters required Board approval.

Q Now, this separation of NYNEX and UIH is contrary to your fundamental policy of having the two on the same track; right?

A Yes.

Q And you testified that Mr. Ng at least in August certainly understood that UIH and NYNEX had to be on the same track and that's the only way you'd ever do this deal?

A No, I think that he understands my guidance. I think what he's doing here is to say that, look, this is a proposition that's possible for you to consider.

Q This is the bid case presentation; right?

A Yes, the bid case presentation, I think, is in the front part whereby the bid case is on the basis we do it ourselves 100 percent and the partnership issue is a separate part of the presentation, I believe.

Q But it's part of the presentation?

A No, it's not part of the presentation of bid case, it's a presentation based on partnership issues that we had to consider.

Q Was this presented to you in mid-september?

A Yes, it was.

Q All right. And what you have here is contrary to what you had told Mr. Ng as your fundamental policy; right?

A No, what Mr. Stephen Ng is saying that the proposition he's suggesting that we now ought to think about based on the circumstances that he's aware of is what he's putting forward. The proposition that I asked for he is saying that perhaps it not what he's able to present today, at that time.

Q Well, the circumstances he's aware of, that would take into account conversations he's having with NYNEX and UIH; right?

A Absolutely right.

Q All right. And based upon his conversations with UIH and NYNEX, this is the way he saw the situation; right?

A This is the way he saw that a possible proposition is for the Board to consider.

Q Now, you have no idea what he was telling UIH and NYNEX on that score; do you?

A Oh, I think that I-- based on my working relationship with Stephen Ng, he's authorized, on a non-committal basis, to have constructive dialogue with prospects. And that's what he has done indeed, he has made no commitment--

Q How do you know?

A --he has--well, this is my guidance to him and I trust him. I work with him before and that's the start we work together for many, many years.

Q Well, let me stop you there. You have no basis at all other than what you just said for whether or not he made a commitment to UIH or NYNEX?

A My--what I said is that he made no commitment to anyone.

Q How do you know?

A Because this is my instruction to him.

Q But you don't know what he did?

A Based on my working relationship with him in the past, I have full confidence that he would abide by the Board instruction and my instruction.

Q Well, let me stop you there. You testified that on August 11th it was your clear instruction that if there was to be a NYNEX, there was to be a UIH; and if there was to be a UIH, there was to be a NYNEX; right?

A What I said is that that's one of the proposition that I want to see as based on my original guidelines. Now, I did not restrict Mr. Ng from discussing other propositions that he wish the board to consider.

Let me just make a comment on terms of how large corporations work. Management is asked to do certain things. In this instance, go out and solicit propositions. And these propositions do not bind our company. And when these propositions come to our company, the Board has to approve in its full context.

Now, at that time the Board may see five propositions in front of them. They may say, look, I like A, I don't like B, C, D and E. Or they may say I like to have E and I may not like to look at A, B, C and D. So this is how corporate boards do work. Management have an instruction to do certain things. In accordance to board guidance, they would try to find the best deal possible and alternatives. And these propositions you bring to the board are--do not commit the board, do not commit the company and that's the way it's been working and that's the way it will work in the future. Not just our company, but other companies also.

Q Have you completed your answer?

A Yes.

Q Now, you say that Mr. Ng solicited propositions. You said that?

A That's right, in discussions with the prospects.

Q So you are testifying that this, what's shown on your screen here, is the proposition of somebody other than Wharf?

A No, this is what Mr. Ng had gathered could be a proposition.

Q Gathered could be a proposition.

A That's right. He's mention it as far as partnership issues concern, this may be one of the propositions that may come to the Board in its final form.

Q This is the only proposition you've got in front of you, isn't it?

A No, there's another proposition is where you can do it yourself 100 percent. This is just an alternative.

Q Where does it say that in this document?

A No, the bid document is based on the company, as it all--so, therefore, the whole exercise you got to remember is that the alternatives as always that Wharf can be 100 percent shareholders because I think that this is never an option that is off the table. It's always an option on the table.

But having said that, there are other propositions that can be. For example, a proposition of ten, 20, 70 of NYNEX--of NYNEX, the UIH and Wharf is one proposition, but that proposition has qualifications. For example, the qualifications is that in that case UIH has financial issue, NYNEX may not come back, you know, to have a full board approval on their own. That's one proposition. This is another proposition.

So I think the boards are always asked to look at these very difficult situations. You're never going to have a proposition that is going to be prefect to your suiting, but it does not stop management to find these propositions, all

always on a non-committal basis. I don't know how other companies work, but certainly for major projects like that, especially large and complex projects like that, it is not unusual for the board to consider an array of propositions.

Q Mr. Woo, this is the only proposition Mr. Ng brought to you in mid-september in this document; right?

MR. JENTES: Object. Asked and answered. He just answered it as to the other alternatives--

THE COURT: Sustained.

MR. JENTES: --they had available.

Q (by Mr. Chase) Mr. Woo, when you got this document and it laid out this proposition, did it raise a question in your mind as to what Mr. Ng is talking about with UIH and NYNEX?

A Well, I think he's reflected that that being a possibility.

Q You don't know what he's telling UIH and NYNEX, but you do know it's got something to do with UIH coming in at ten and NYNEX coming in as a technical cooperation partner?

A I know that Mr. Ng is talking to everyone, making very clear that any deal is subject to shareholders approval and subject to shareholders agreement which needs to be signed.

Q How do you know--

A Now--

Q --he said that?

A Let me just finish.

Q Sure.

A First of all, the point I mentioned later about the need for shareholders agreement to be signed. Well, Mr. Ng cannot sign that shareholders agreement; he's not authorized. The only one that can sign the--the shareholders agreement is through authorization by the Board, either Board meeting or Board resolution. It's only that is where the power is to authorize any transaction.

So, therefore, Mr. Ng, I know will be out there talking to many people, say, look, now, we have to find a way and there are many ways and, you know, proposition A, proposition B, I'm sure that throughout these discussions there were many propositions that's been discussed with NYNEX, that has been discussed with UIH. There's a multiple of propositions. But the only proposition that will be binding to all parties is one that is signed with a shareholders agreement. And I trust that if NYNEX is involved, they would want their board to sign that--the authorize the signing of that agreement.

So, therefore, I would repeat what I said before, that these propositions are ideas and these ideas Stephen are talking to many, many people and these people, if they don't understand this thing, I would be very surprised. I think certainly they don't expect Mr. Ng to sign a shareholder agreement.

So I would suggest that the first point as far as this particular paragraph is concerned, it is separate from the main presentation as far as the bid case. The bid case, does not say that, well, if NYNEX and UIH are coming in on this basis, the numbers would be X. The numbers will be based

on what we think the business case is. And we take the shareholder issue as a separate issue.

Q Mr. Woo, look over at the first page where it says, "Bid Case Wharf Cable, Bid Case Presentation to the Board"?

A Yes.

Q Now, that's all set forth there as one basic presentation; right?

A Yes.

Q And down at the bottom it says, "Partnership issues, NYNEX, UIH;" right?

A That's the last issue; yes.

Q Yes. And it's part of the document called Bid Case Presentation to the Board; right?

A That's right.

Q Okay. Now, let's get back to the substance of this bid case presentation here, Mr. Woo. Let me ask you another question. You talk about soliciting proposals, when Wharf's lawyer, Mr. Bellis, of Harbert Smith law firm, is sending out drafts and proposals, those are Wharf's proposals, aren't they?

A No, these are discussion papers.

Q When your lawyer sends out a draft to another party, that's a draft that your company's proposing; isn't it?

A These are ideas for discussion.

Q He just makes them up?

A No, these are ideas for discussion.

Q These are not things that Wharf authorizes or stands behind?

A These are ideas for discussion and these ideas will be finalized into a form whereby these forms will be submitted to the Board for its approval.

Q So when your lawyer sends something out to another party saying here's a draft, the other party is to read nothing into that about whether this is something that Wharf could approve?

A This is something that Wharf would like to have their comment. Subject to them giving us the comments, we will take that document and go to our board to see if our board would agree with it--

Q But where would--

A And approve it.

Q --the ideas come--in the first place, don't the ideas that go into that come from your management?

A Ideas must come somewhere. You must have a starting point for discussion. You cannot just suddenly have a shareholders agreement prepared in its final form. The ideas--I mean, that's what this is all about. You have ideas, I have ideas, we try to study these ideas see if they have common grounds now. Once the common grounds are reached and that--we must know what the corporate

processes are, that is subject to a shareholders agreement. We all know that.

So, therefore, in anything--in absence of a shareholders agreement is not a valid, legal, binding agreement.

Q Oh, really?

A This is our understanding of these majors deals that's done in Hong Kong in terms of transactions of such large and complex nature, without a shareholder agreement regarding it, it is almost impossible to know what each person's positions are.

Q Mr. Woo, you're not suggesting that to own stock in a company you have to have a shareholders agreement, are you?

A I'm sorry?

Q You're not suggesting that to own stock in a company you have to have a shareholders agreement?

A Well, if it's a public company you can buy shares in the market, but when the listed company put its share on the market, it has a memorandum of articles that guards the shareholders rights. So there is a shareholders agreement and even in that regard.

Q And every one of your corporations has Articles of Incorporation; don't they?

A That's correct.

Q And every one of your Articles of Incorporation are under Hong Kong law, are they not?

A That's correct. Well--

Q And every--

A --some of them--some of them they're not Hong Kong companies, yes.

Q The ones that we're talking about in this case, Wharf Holdings?

A Yes.

Q Hong Kong?

A Yes.

Q Cable Network Communications?

A Yes.

Q Wharf Communications Investment Limited?

A I have to check on the records.

Q Wharf Cable?

A Yes.

Q They all have Articles of Incorporation, don't they?

A That's correct.

Q And these Articles of Incorporation are pursuant to Hong Kong law, are they not?

A That's correct.

Q And they protect the shareholders of the corporation, do they not?

A That's correct.

Q And beyond that, you don't need a shareholders agreement to have the protection of Hong Kong law, do you?

A No, we talking about a joint venture partners. And that joint venture agreement if it comes to a fruition needs shareholders agreement of the investors.

Q I'm talking about owning shares in a corporation. In Hong Kong in any one of your corporations--

A Yes.

Q --a shareholder is protected under Hong Kong law by your Articles of Incorporation; are they not?

A That's right, signed by the shareholders.

Q The shareholders don't sign Articles of Incorporation, do they?

A Well, the shareholders agreement that the each company has a memorandum and article that is approved by the company, by the--by the directors and also by the shareholders.

Q Mr. Woo, if somebody wants to buy stock in Wharf Holdings--

A That's right.

Q --they don't have to sign a shareholders agreement, do they?

A No, it's been signed already.

Q It's been signed by the people who were the original shareholders?

A That's correct.

Q And then somebody can come in and they can buy and are protected by the Articles of Incorporation?

A That's correct.

Q And that's true also with respect to Wharf Communications Investment Limited?

A That's correct.

Q And Cable Network Communications?

A That's correct.

Q And Wharf Cable?

A That's correct.

Q Now, look at page 21 of this bid case presentation. That's Exhibit 465.

A Which page is that?

Q It's page 21 of this 465 and it's entitled "Partnership 2." I don't know why it says two.

A Yes.

Q Except the next page says 3 and the page after that says 4. So I suspect, if I can try to read the mind of your documents, this was page 1 saying who the partners going to be, and that UIH; right? That's what page 1 says; right?

A Yes.

Q All right. And then page 2, 3 and 4 talks about the terms; right?

A Yes.

Q And these are terms that would have been negotiated and worked out with your management and with UIH; right?

A No, no, I think that what we're saying is that, look, this company is currently owned by us in terms of the existing structure because we're the dominant partner in this particular situation with a company that we bidding for the franchise of the cable television. And we're now talking about inviting new shareholders into our company.

Q You--you're not or you are?

A We are considering--

Q All right.

A --inviting new shareholders into our company under alternative and optional structure that we feel is suitable to us.

Q You're talking about inviting new shareholders pursuant to the terms set out here on pages 2, 3 and 4 of the partnership discussion; right?

A We talk about the invitation of new shareholders we are being considered by us as far as the management is concerned. And after the management is ready to make a recommendation to the Board, the Board would consider the recommendations of the management.

Q Well, pursuant to these recommended terms on this document, right?

A We don't know what management's going to recommend at the end.

Q Well, do you understand that when these partnership terms were proposed to you by Mr. Ng that he had discussed these with UIH and possibly even NYNEX?

A Well, I mean, that would not surprise me because Mr. Ng has been constructed to have constructive dialogue with all prospect candidates.

Q And that he would have constructive dialogue on the specific terms set forth in this document?

A That's right, without committing to company.

Q But at least to his satisfaction, those terms have been worked out before he brings them to you?

A That he felt that he was able to recommend it.

Q As a matter of fact, let's talk a little bit about management and the Board. You were talking about ideas

have to come from somewhere and the Board retains discretion. When management brings you something, you want them to be bringing you what it is they're ready to stand behind; right?

A What I'm willing to say here in terms of the processes concerned depends on the situation of the working environment. Management will bring proposals to the Board and the Board is free to decide.

Q Your management, specifically here Mr. Ng with respect to the cable TV project, is to bring to you things that they're ready to recommend; right?

A Sometimes and sometimes not.

Q Did you understand Mr. Ng was ready to recommend what's contained in this document?

A I think Mr. Ng is outlining to me the state of affairs, that this is a possible proposition.

Q And the state of affairs would include his discussions with UIH and NYNEX up to that point?

A Absolutely right.

Q Now, go back to, if you will, partnership issues under UIH where it says, "Ten percent equity partner and interested in more, not a balance sheet company." I believe you testified before that you understood that to mean they're not a deep pocket.

A Yes.

Q By that we mean that they're--they're not rich.

A It just means that the--the balance sheet is not strong.

Q Okay. And we certainly--you know you're not dealing with somebody of the magnitude of NYNEX here?

A That's correct.

Q And that's something that you knew all the way back in January 1992; didn't you?

A That's correct.

Q Now, in this document it says default provisions. You see that under UIH?

A Yes.

Q Default provisions is another word for dilution; isn't it?

A It means default.

Q Well, what did you understand default to mean in this document?

A It means somebody who cannot fulfill its own commitment.

Q And what would that mean in terms of UIH if they couldn't--if they got into this deal and couldn't fulfill their commitment?

A They can't subscribe to new capital, perhaps. There are other commitments that may be required within the shareholders agreement that they cannot fulfill.

Q And so they would not be able to subscribe and they'd e diluted; right?

A Well, if--if it relates only to the capital case, that's probably right, but other cases depends on the shareholder agreement.

Q Let's--let's look at the last page under--under the partnership terms. Now, you see what it says there?

A Well, that's--

Q I'm going to read you the last two bullets. "If CNCL also wins a telecom license, unwilling shareholders will be diluted." Do you see that?

A Yes.

Q And did you understand at the time of this document that that was acceptable to UIH?

A I don't recollect any particular thoughts on that particular point.

Q Would Mr. Ng be presenting this to your Board if it wasn't acceptable to UIH?

A I can't recall what was discussed at that time.

Q And by diluted, what that means is that their ten percent share would start to be worth less because more shares would be issued but it would be issued to other parties; right?

A Not necessarily. Depends on the state of the company at that time. It be diluted in terms of their percentage of their holding of their company would reduce, but the value of their shares would be subject to the company affairs at that time.

Q All right. Let me see if--you said that real fast and so let's make sure we understand it.

UIH has ten percent, let's hypothesize that for a second.

A Yes.

Q Not for a moment do I expect you to agree with me on that point.

A Right.

Q But let's hypothesize--let--let's just imagine--

A Yes.

Q --UIH has ten percent.

A Right.

Q Okay. UIH and then there's a capital call to go into the telecom project for $5 million and--or for $10 million, UIH is going to have to come up with a million; right?

A That's right.

Q And they choose not to come up with the million.

A Right.

Q Now, what's your understanding as to how dilution works in that situation?

A Well, I think first of all the value of their ten percent holding in terms of percentage terms would probably reduce because somebody else put more capital into the company.

Q So they'd still have ten percent--

A No, no, no, no. Let me finish, please.

Q Okay. I'm sorry. You can do it any way you want.

A Let me just explain. The value of the--assuming there are 100 shares in the company and because of ten percent holding, you have ten shares and it's worth $100 million, so the ten percent share is worth $10 million. So you raise capital, you take the company from 100 million to 150 million. And so at that time the company--total company's worth is 150 million, the percentage of ten million versus 150, of course, is much lower than the ten percent, but if the company's still worth 150 million, the original investment by this person would still be worth ten million and not--there's no dilution to that.

Q So that's not dilution?

A The value--whether the value dilute or not, it depends on the state of the company at that time, but percentage-wise there'll be a dilution.

Q All right. And it's--without having you re-explain that because I'm not going to poll the jury to see if we all got that, but without going--it's really like a penalty in a way if you don't put up your money; right?

A No, I think that's the shareholders would decide whether by putting up the capital is what they want to do, they can choose not to.

Q And--

A They may think that not--by not doing so may be to their benefit.

Q All right. Now, that's the word I was looking for. Choose. They can choose whether to put up the capital or not.

A Yes.

Q It's their option?

A Well, if capitals are raised.

Q And that's the way it was going to be dealt with according to Mr. Ng with respect to a telecom license, at least as far as this document goes?

A That's right. If--

Q And then the last provision is generally shareholders defaulting in funding will be diluted. Do you see that?

A That's right.

Q Same dilution principal; right?

A No. Percentage-wise I would agree.

Q Well, let me say it a little bit differently. The shareholder would have the option of putting up the capital; right?

A Yes.

Q And if the shareholder chooses not to put up the capital, the shareholder is going to be diluted?

A In terms of percentage, but not in terms of value.

Q He has the same value he started with, but a lesser percentage in the company?

A Probably.

Q That's the way you understand that?

A That would be my understanding.

Q And it was your understanding that was acceptable to UIH at that time?

A No, that was a point that was being made.

Q It was a point being made to your Board of Directors?

A No, the point is being to in the presentation with regard to shareholding structures.

Q Well, it's being made in this bid case presentation?

A Well, this is a real general statement that applies to every company.

Q Mr. Woo, I don't mean to quibble with you, but this is page 4--

A Yes.

Q --under partnership page 4 which starts with a heading called "Partnership Issues." And that's what we're talking about on this page. This is not some general textbook about partnerships, is it?

A We're referring to page 4, aren't we?

Q We are. I'm starting back on page 1 where it says "Partnership Issues;" do you see that?

A Yes. Yes, I see that.

Q Talking about specific partners; right?

A Issues.

Q Yes. Partnership issues--

A That's correct.

Q --NYNEX, UIH, Time Table; right?

A Yes.

Q Very specific.

A Yes.

Q Then you go over to page 2. Very specific talking about the partnership referred to on the previous page; right?

A That's correct.

Q And then we go over--all the way over to page 4, still talking about the same partnership; right?

A That's correct.

Q And it's talking about dilution principals; right?

A No, I mean, these are general principals that applies to any company.

Q Well, excuse me. The bullet says, the second one, "If CNCL also wins a telecom license," CNCL is a very specific company, isn't it?

A Yes.

Q That was your company that owned Wharf Cable; right?

A Yes.

Q And then the next one is, "Generally shareholders defaulting in funding will be diluted;" you see that?

A Yes.

Q Now, do you understand that also refers to CNCL?

A Yes.

Q All right. And that refers to the partnership issues being discussed in this document?

A Yes.

Q And do you understand that Mr. Ng discussed this principal with UIH and NYNEX prior to presenting it to you?

A What I understand he discuss with them? I don't know.

Q Would you anticipate that he would have discussed this with them before discussing it with you?

A Well, if you ask me, the statements here are general statements that apply to any company.

Q Mr. Woo, Mr. Ng's job is not to write textbook on shareholder rights; is it?

A No. I'm sorry, Mr. Chase. You think you and I are missing something here. All I'm saying is that, look, you ask me what I know Mr. Ng has talked with UIH and my answer is I don't know. And my point here is very simple. I said these terms are something that in my own personal opinion as a lay person, looking it from a lay person's standpoint, it's a very general statement. I don't see what's the point. I don't understand it.

Q Well, maybe I'll try a little harder. The point is that this is a proposition that related to the proposed partnership with UIH; right?

A This is part of the shareholder issues that was brought to the--to the attention of the meeting.

Q All right. In connection with UIH; right?

A In connection with vast area of partnership issues.

Q The partners being discussed was UIH; right?

A It's a general statement that was made there. And I think that if you're trying to connect UIH with this particular comment, I would agree. I don't have any problem with that.

Q All right. And you'd anticipate then that it was discussed with UIH before it was presented to you?

A It's nothing that would really bother me one way or the other.

Q Okay. Now, flip back if you will to the time table. Let's look at the time table. Now, this is also very specific, isn't it?

A Yes.

Q It says, "MOU to be signed this week." That's memorandum of understanding; right?

A Yes.

Q "Shareholders agreement to be signed next week;" right?

A Right.

Q And then technical cooperation agreement to be signed next week; right?

A Right.

Q And the technical cooperation agreement would be NYNEX; right?

A Based on the memo here, yes.

Q And NYNEX would not be a shareholder for purposes of either the MOU or the shareholders agreement; would it?

A That's one proposition, yes.

Q That's the proposition that's brought to you, isn't it?

A That's right, for consideration.

Q Look, please, if you will, at Exhibit 463. Same book. This is a document called--

A 463?

Q Yeah. 463. It's going to be in the white books. You there?

A Yes.

Q Now, this is a document strictly private and confidential from Wharf's files, Wharf Cable Bid Presentation; you see that?

A Yes.

Q Bid case presentation. Notes of meeting in 24 F Welock House Board Room at 4:00 p.m. on 15 September 1992.

A Yes.

Q And it says people attending and it has you as the chairman; right?

A That's correct.

Q And these are the issues raised by you in the presentation?

A Yes.

Q This is the bid case presentation?

A Yes.

Q Now, look over if you will--ha, mine's so marked up I'm going to have to use a clean one here. Look over if you will at page 2. Where would we be without Xerox machines?

THE COURT: Probably a lot farther along in this case.

(Laughter)

MR. CHASE: I have no come back.

(Laughter)

Q (by Mr. Chase) Mr. Woo--yet. Look at 463, please. Now--

A Yes.

Q --this is part of the bid case presentation.

A 463, yes.

Q Yes.

A What do you want me to look at?

Q I want you to look at page 2.

A Okay.

Q Now, as part of the bid case presentation, as one of the chairman's comments, because that's the title of this document, following issues were raised by the chairman. You raised an issue of UIH risk, no balance sheet; you see that?

A Yes.

Q And that is part of the bid case presentation; right?

A Right.

Q And then it says, "SN to revisit UIH participation with a view to minimizing franchising and other risks;" you see that?

A That's right.

Q And so your understanding was that after this bid case presentation, Mr. Woo--Mr. Ng was going to come back to you with a way of minimizing any risks posed by UIH's lack of a balance sheet?

A Based on the note.

Q Okay. And now there's nothing in this note about the fact that UIH in the bid case presentation is anticipated as the only partner, is there?

A I'm sorry?

Q There's nothing in this note, neither under that heading or anywhere else about the fact that UIH is set forth in the bid case presentation as the only partner?

Let me ask it differently. There's no concern expressed by you in this document about the fact that the bid case presentation is a presentation of Wharf having one partner only and that partner is UIH?

A No, I think that what this note reflects is that on this particular one proposal that's been presented, that was a comment I made. Doesn't

Q Show--

A --mean--

Q I'm sorry.

A It doesn't mean that there are no other propositions that we are considering.

Q Show me somewhere on that document reflecting your comments or concerns that there's only one partner in the bid case presentation, that being UIH.

A As I said before, the presentation was in September of--14th, is it?

Q 15th.

A 15th and these are propositions that's been made and these are propositions that are subject to the Board approval and my agreement. I could ask Stephen to investigate certain aspect of a proposition, but that does not mean that the proposition as a whole will receive approval or not approval.

Q Mr. Woo--

A That final discretion is still left due process.

Q Mr. Woo, I'm looking at a document here--

A Yes.

Q --Exhibit 463.

A I have the same.

Q It--it's relating to the September 15, 1992, bid case presentation--

A Yes.

Q --that has UIH listed as the only partner.

A That's right.

Q Right?

A That's right.

Q And this document, Exhibit 463, says, "Following issues were raised by the chairman after the presentation." You see that?

A That's correct.

Q Now, maybe I'm missing something, but show me somewhere, anywhere, in this document where it says an issue raised by you was the fact that there would be one partner instead of two.

A There's no mention there.

Q Now, let's look over at the last page, "Partnership Issues." Where I guess that would logically be if it were to be here, wouldn't it?

MR. JENTES: Object. Argumentative, Your Honor.

MR. CHASE: Withdrawn.

Q (BY MR. CHASE) "Partnership Issues;" you see that?

A Yes.

Q It says, "In view of the funding and balance sheet risks, should we start to call upon equity from UIH first? Sn "--meaning Stephen Ng, I guess--" to think of contributory strategy." Do you see that?

A Yes.

Q All right. So the funding and balance sheet risks were your concern over the fact that UIH was not a financially deep company?

A I'm sorry?

Q The funding and balance sheet risks reflect your concern that UIH was not a financial deep company?

A Yes.

Q And as a result of your concern, you raised the issue of should we start to call upon equity from UIH first.

A Yes.

Q And calling upon equity from UIH first would mean coming up with a strategy where UIH has to put up its money first, before any other partner; right?

A Well, as a proposition going forward, Stephen Ng need to see if that proposition can be improved.

Q This is your proposition, isn't it?

A No, the proposition that has been outlined over the last four pages of the--of the presentation memo, that is a

proposition for consideration and the idea was that, well, that is one proposition. Can Stephen improve on that particular--on that particular proposition.

Q So what you're saying to Mr. Ng here is, I see your proposition that's contained in the bid case, and I see your proposition where you've got UIH listed as the only shareholder, but I'm worried about their balance sheet, so can you think of a strategy where we make them put up their money before the other partners?

A I think that's--as I said before, I don't want to repeat that. I said that, look, this is a proposition that Stephen Ng is trying to present. This is his idea for a partnership structure and we discussed that. That is one proposition, that doesn't mean that's the only proposition, but for that proposition to improve it, obviously Stephen has to do additional work.

Q Your comment here about calling upon equity from UIH first assumes UIH having equity; right?

A Yes.

Q Equity means ownership; right?

A Participation ownership, yes.

Q And this is based upon the bid case presentation; right?

A That's based on the partnership considerations that we have.

Q In the bid case presentation?

A The bid case is separate from partnership issues.

Q Mr. Woo, I hate to keep doing this to you, but you keep saying it. This document says the following issues were raised by the chairman after the presentation. And the top of it says notes of meeting at 24 Welock House, September 15, 1992, Wharf Cable Bid Case Presentation.

A Right.

Q And under that heading are the partnership issues; right?

A Right.

Q And Mr. Ng presented to you a partnership issue with UIH as the only partner.

A Yes.

Q And your response was, okay, they got a balance sheet problem. Let's think about how we can make them pay up first.

A If we were to choose that proposition.

Q And you sent him--

A But we hadn't decided which proposition to choose.

Q Pardon me?

A We have not decided which proposition to choose.

Q Based upon what you had in front of you, this was your response; right?

A That was the proposition under consideration.

Q Well, all right. Did Mr. Ng come back with a contributory strategy of how you were going to get UIH to pay up its money first?

A I can't recollect.

Q Let me ask you to turn your attention to Exhibit 473 and Exhibit 484.

A 473.

Q Now, these are two documents that you and I danced around about a little bit earlier when we were talking about timing; right?

A Maybe you were dancing.

Q Touche. I was dancing all by myself.

Now, Exhibit 473--wrong document. 473 is September 16, 1992; right?

A Yes.

Q Now, Mr. Ng reports to you in this memorandum, it's from him to you and Mr. Hagenson, Mr. Law and T.Y. Ng; right?

A Yes.

Q And this relates to the meeting yesterday, am I presumptuous in saying that's probably the bid case presentation?

A Yes.

Q All right. We considered the pros and cons of including UIH as an equity partner in the Wharf Cable bid; see that?

A That's correct.

Q And Mr. Ng was asked to give his thoughts on the matter and that's what this Exhibit 473 is, the pros and cons document?

A That's right.

Q And you read this document very carefully, didn't you?

A Yes.

Q Okay. And not only did you read it, but you bled all over it. Look at Exhibit 484.

A Yes.

Q Exhibit 484 and maybe we'll--we'll launch into another meeting here. Maybe we won't.

Excuse me, Your Honor. This is an easel. I--I didn't--

THE COURT: It's what Van Gogh used.

(Laughter)

MR. CHASE: --take easel in school.

(Laughter)

MR. CHASE: I failed art.

Q (BY MR. CHASE) All right. How's that? Okay.

All right. So let's put 473 aside because that doesn't have your handwriting on it and let's look at 484.

You see that?

A Yes.

Q Now, 484 you would have marked up 473 at or about the time of September 16, 1992; right?

A Yes.

Q And these are your comments to Mr. Ng; right?

A That's correct.

Q Now, you marked up the document, but you didn't talk to him about the document; that's right, isn't it?

A I may have. I can't recollect any specific conversation, but certainly I mark it up and send it back to him.

Q All right. And if you don't recall any specific conversations, obviously you couldn't recall whether you amplified on any of these particular points that--

A I really--

Q --you're raising in the document?

A I really can't recollect.

Q All right. Now, let's look at--I'm going to take a little bit of time with this. Went through it a little too fast for my taste on your direct.

Let's--let's look at the beginning of it. UIH is ready to--I'm reading the typed portion. "UIH is ready to commit to ten percent equity, but it's funding capacity is conditional on raising capital from its investors." Do you see that?

A Yes.

Q And then it goes on to say, "On the other hand, NYNEX has a bankable balance sheet and management is keen to take 20, 25 percent, but it won't get board approval." Do you see that?

A Yes.

Q Now, you've circled conditional next to--on the first line about UIH and you say in a very low key way, "No, no, no, we don't accept that;" right?

A Yes.

Q And that's what you're saying to Mr. Ng in this memorandum?

A Yes.

Q And just to make it perfectly clear, you never said this to UIH; right?

A No.

Q All right. So you didn't accept the conditional part of this?

A That's correct.

Q And you didn't discuss with Mr. Ng what conversations he had with UIH regarding about--regarding their funding being conditional?

A No.

Q The you go on and we go on to the memo and under A--well, let me go to your point two there. You've got point two circled. Zoom in on that puppy here. And it says, "We will save up equity if they"--you better read that for me.

A We will save up equity for them if they clean offer.

Q All right. Now, that meant, then, that you were ready to offer UIH the right to invest if they could come up with the money?

A No, in my mind it's the three-party joint venture and in this memo, the way I read it in the whole context of it was that NYNEX needed time, they need time to do their thing mid-October for Board approval, so would be saving up equity for them. So if the UIH offer is on a conditional basis, on raising capital, they also need to wait and we need to wait for them and accommodate them later when NYNEX all come in.

So my mind is very, very clear in terms of a three-party situation.

Q Well, excuse me, but can you tell me here where it says we will save up equity if they clean offer and NYNEX comes in?

A Yes, I think that NYNEX we had to save capital anyway. I don't say it because they won't get board approval until the middle of October. So, therefore, I mean,

my mind set is always, look, we need to wait for the--the NYNEX. That's something we have to do. I mean, it's not--I don't think that Stephen need me to say that.

Q Well, when you say we will save up equity, were you willing to have Stephen go to UIH and say, okay, you're in if you can come up with the money?

A No.

Q So you were willing to consider UIH, but you weren't willing to tell UIH that if they came up with the money they were in?

A Our proposition has always been three-party situation. All shareholders must agree, they come in together. That's our proposition. And as far as the decision that was made through this final set of papers in terms of which direction we are going, the 100 percent Wharf ownership was the decision and the proposition laid out in option one was what we chose.

Q Well, let me ask it differently. Did you say to Mr. Ng, "You go back to UIH and you tell them that if they come up with the money, and if NYNEX is in, they're in"?

A I made that comment, I sent it back to Stephen.

Q Well, does that comment mean that if UIH comes up with the money and if NYNEX is in, he's to tell UIH they've got a right to invest?

A I don't want to repeat myself, Mr. Chase. The decision that was sought for this memo was whether it's option one and option two. I choose option one.

Q I'm trying to understand--

A They are comments that I wrote I sent to Stephen and as I said to you, I don't recall whether we have subsequent conversation on any one of these specific points, but the main point that was decided was that option one, 100 percent Wharf, was the only way for us to go base on the policies and the guidelines that we've set out and the principals we have followed.

Q But all you said to Mr. Ng with respect to that subject in this memo was we will save up equity for them if the clean offer; right?

A I--I made that comment to Stephen Ng and I think that as far as I'm concerned, the options one that I circled was the point, that was the point that he was seeking. As far as the future follow-up actions concern, it follows up with the options one scenario with A, B, C and D.

Q So Mr. Ng gets your comment here, we will save up equity, and you have no idea what he told UIH about that; do you?

A My liaison and my discussion with Stephen is strictly on the basis that this is the memo that I sent back to him.

Q That's it?

A And I don't recollect if I have further conversation with him. I may have, but what specifically I really, really can't remember.

Q Let's look at some more of your memo here. Priorities.

Mr. Ng lays out the priorities here. Strategic priority one in terms of winning the bid and you've circled that. I take it you agreed with him that that's the highest priority at this point?

A I don't think that that indicate whether I agree or I don't agree. I think that as far as the priority that was outlined there, I circle, I say packaging was important and winning the bid.

Q Packaging meaning what kind of presentation can we make to the government? How's it going to look?

A That's right.

Q That's what we mean by a package?

A That's right. Or structuring, packaging, yes.

Q Okay. Now, let's look down at option one that you chose. And certainly when you were reading option one you read points A, B, C and D; correct?

A Yes.

Q And you read the point that says, "Wharf's ability to implement without perceived industry expertise may be questioned.

A Yes.

Q "Without equity participation, NYNEX/UIH not being consultants may have other priorities."

A Right.

Q "Hutchinson will have industry players as equity partners."

A Right.

Q Did you read that at the time?

A Yes.

Q And did you understand at the time that UIH was not a consulting company?

A UIH is a--was a candidate that is seeking to get an invitation from us to be invited to be a partner.

Q Excuse me, Mr. Woo, but you--you say things like that, yet you personally had no communication at all with UIH, so you don't know what was going on between Mr. Ng and UIH; do you?

A I have no communication with UIH; that's correct. However, I look at UIH as a candidate that is seeking to get an invitation from the Wharf Company to join in as a ten percent shareholder. And under the framework that I have described earlier with regard to a telecom partner as a dominant partner, as a cable company and the Wharf Company being the dominant partner. That is what I understand to be the case.

Q That's your understanding?

A Yes.

Q You have no idea what UIH's expectation or understanding was, do you?

A No, I have made it very clear. Again, I've asked Stephen to say that what are the terms that we want to seek--what are the terms that we wish to secure that our Board would be happy to invite these participants to come in on. Now, that is the mandate that Mr. Ng has.

Q And that's as much as you know, then?

A I think that at the end of the day, the terms that Mr. Ng can put together, either the terms are on the basis whereby the Wharf Company cannot accept that UIH demands or they are terms that the Wharf Company may want that UIH cannot accept. That, you know, also is a possibility because come to the end of the day, Wharf has to look at this particular project as an important project for its own company and its own future and to select the right partner for it.

Q Let's go back to your memo here, or Mr. Ng's memo to you. Okay. So now the answer to my question is you do understand that UIH was not a consulting company?

A Now or--

Q Then.

A My understanding is that UIH as a candidate would offer services and assistance so that they feel that they have shown enough intention, shown enough willingness or shown enough interest that they wish to be part of this thing so that we can say, yes, there are various prospects. Mr. A is more enthusiastic than Mr. B. And it all comes to our final decision of who we pick.

So the degree of enthusiasm and the things that each partner would be willing to do depends on their own

eagerness in terms of trying to get an invitation from us. I mean, that is very true for all similar type of situations.

Q Mr. Woo, I'm trying to be polite and not interrupt your answers, but I'm also going to have to insist on an answer to my question. When you received this memo, you understood, did you not, that UIH was not a consulting company?

A No.

Q You did understand or you didn't understand?

A My understanding of UIH's as described in many papers that Mr. Ng had provided to me and I don't believe that any of the papers and any conversations that we've had had really specifically focused on the subject of whether UIH is a consulting company or not.

Q Is it your testimony that prior to receiving this memo you didn't know whether UIH was there for investment or for consulting?

A I knew that UIH is there to want to be considered as a partner to this new venture.

Q Okay. So you knew they were there for investment?

A I knew that they wished to be considered, yes.

Q And when you got this memo at least and you read it, you knew they weren't consultants?

A Which paragraph?

Q I'm looking at A under Options where it says, "Without equity participation NYNEX/UIH not being consultants may have other priorities."

A Yes.

Q Okay. You understood that?

A Based on the wording, yes.

Q Well, is there anything about the wording that's tricky or the concept? You understood it at the time, that's why UIH was there.

MR. JENTES: Your Honor, he's asked and answered.

THE COURT: No, he hasn't. Overruled.

THE WITNESS: I'm sorry?

THE COURT: I overruled his objection.

THE WITNESS: Okay.

Q (by Mr. Chase) I won the coin toss. You've got to answer. was your understanding at the time--

A Yes.

Q --that UIH was there for investing, not consulting?

A Yes.

Q All right. Let's go down the memo a little further. In the next two paragraphs it refers to things that Hutchinson will be able to do. Where it says, "Hutchinson will have its

plan validated by other investors." Do you see that in paragraph B?

A Yes.

Q And then in the next paragraph it says, "Wharf's ability to put together joint venture in essence work with others may be questioned." And that's if Wharf doesn't have a partner.

And then it says, "Hutchinson can." Right?

A Yes.

Q And you and your company were very concerned at this time about Hutch--what Hutchinson, TCI, Time Warner and Comcast were going to do in the competing bid?

A Yes.

Q Now, it--in the side here it says, "JV Co. 20/20/60, management company, we control, three year term, five percent;" do you see that?

A Yes.

Q Now, I believe on direct examination you testified that would be simply a joint venture management company; is that right?

A That's correct.

Q And the five percent would be a share of the profits paid to the management company; right?

A That's correct.

Q So there would be a joint interest in the property among the joint venturers; right?

A That's right.

Q All right. Let's go over to the next page. Now, the top point which merited a check from you, not a bank check.

"UIH combines U.S. cable expertise through is principals such as Schneider, and international cable expertise through its present investments which none of the U.S. cable companies, including Time Warner, et cetera, can claim;" do you see that?

A Yes.

Q And was that consistent with your understanding at the time of what UIH brought to the table?

A Yes.

Q And then in the next paragraph it says, "If UIH fails," and you have said they will fail and you've put an exclamation point; right?

A Yes.

Q And you never discussed with Mr. Ng what you meant by they will fail?

A No.

Q You did not discuss that with Mr. Ng?

A Not that I recall.

Q Now, let's go to your handwriting down at the bottom here. All right. Now, these are--these are some additional points you want to make for Mr. Ng and down at the bottom it says, "Acquire technical expertise. Wharf/NYNEX, Wharf/UIH o cable TV;" right?

A Yes.

Q So it was important to you that Wharf be able to acquire this expertise from UIH?

A It would be useful to acquire the technical expertise. And as the note said, have joint venture partner that we may invite them to invest; you know, that means in the future. And these are all suggestions in terms of let's look at these possibilities. I think that--Mr. Chase, can I answer this question broadly?

Q Ask me a question.

A Okay. Answer this question broadly. I think that you been asking me to explain each individual parts. And I think that I try to do that, but I think that it is important to look at this memorandum as a whole. And the memorandum as a whole is basically there are two propositions on the table. One proposition is the--the proposition for 100 percent Wharf; and, two, is the proposition is 90 to 10. And so, of course, all the points that's been made in this memorandum I read through.

And being the person responsible, I need to take an in balance decision of which way we need to go. And it's always hard to make these decisions. It's not easy, it's a pretty lonely job in that sense, but it's I think clearly when you look at this particular memo that Mr. Ng is saying, look,

you know, we can go 100 percent but there are a lot of issues that we have to worry about.

And the second point is about a 90/10, there are a lot of issues that we have to think about, but not the same sort of worrying scale of the first proposition. And yet I chose to take the first one which means the one that we had to confront the most difficult environment.

That shows the result that--that I took in terms of saying that there are a lot of risks, there are a lot of adverse situation that happens, but given the priority, given the principal that we have adopted all along, we'll willing to take that risk. And that's what really the memo's all about.

As far as the different comments there, they are all alternative, supplemental suggestions for us to consider along the way.

Q Is that your question?

A That's my--I thank you very much to give me a chance to give a broad--

Q Okay.

A --comment.

Q Any time you want to give a speech, just ask and I'll let you, but now I want you to answer my question.

A Okay.

Q All right. Under acquired technical expertise, you notice you put an exclamation point there, didn't you?

A Yes.

Q And you didn't have a discussion with Mr. Ng about this, you just wrote this down and gave it back to him; right?

A Yes.

Q And it says, "Wharf/UIH on cable TV;" right?

A Yes.

Q And then right below that you have, "Have JV partners" and you've got a double line; right?

A Yes.

Q And then you've go another double line that say, "We may invite them to invest;" do you see that?

A That's right.

Q And in your way of doing things that double line means that these are two separate propositions, have JV partners, we may invite them to invest?

A No, these are emphasis points.

Q Well, I take it from your comment here you want to start with having joint venture partners and then you may invite those partners to invest?

A No, no, no. I think that the note, the thinking probably refers to this 20/20/60. The 20/20/60 says that they're investors in the 60, but it's a management company.

Q Well, you want to look at volume--of your depo--do you want to look at your deposition?

A I don't know, I--

Q And I'm not--I took your deposition by telephone.

A Because I think--yeah, that's right.

Q Well, I want to ask you a question. We're done with speeches.

A Yes.

Q I want to ask you a question. I took your deposition by telephone this last summer, didn't I? You were in Hong Kong, I was here?

A Yeah.

Q And I was taking it by telephone because this particular document turned up after I had taken your original deposition, didn't it?

A That's correct.

Q And so I wasn't able to ask you about this document at the time of your original deposition?

A That's correct.

Q Now, if you'll look at your July 17, 1996, deposition, page 31.

THE CLERK: Just a minute, sir. I hand the witness his transcript of deposition taken July 17th of 1996.

THE WITNESS: Yeah. Okay. Thank you.

Q (by Mr. Chase) I'm going to ask you, pages 31 and 32, about some questions I asked you at that time.

A Yeah.

Q On the telephone. And you had your counsel sitting there with you in Hong Kong; right?

A Yes.

Q All right. The question starts with--I'm starting on line 22. And I'm asking about this very document, Exhibit 484.

A Yes. Yeah.

Q "All right. Let me just ask you a few more questions about your handwriting on that page."

A Yes.

Q "What does the double line down by the last two thoughts mean?

"Answer: The double line?

"Question: Yes.

"Answer: I think the double line is to show that they are separate things. That one item is by all means have joint venture partners. Again JV partners. I think that is self-explanatory. Like I explained earlier on the JV code. The second part is that we may invite them to invest. Again, that is a stress to say that we may invite them. It means that it's our option to invite them."

Do you see that?

A Yes.

Q Now those are the questions and those are the answers in your deposition at that time; right?

A Yes.

Q And they were truthful; right?

A Yes, to the best of my recollection.

Q Now, after you delivered this memo--excuse me a second. After you delivered this memo to Mr. Ng, you received back from him a proposal and that's Exhibit 485. I'd like you to look at 485.

A 485.

Q I've got another board here.

Exhibit 485 is a memo from Mr. Ng to you with a proposal about how to work out this partnership arrangement; right? You remember this?

A Yes.

Q And that's got your handwriting on the document?

A That's correct.

Q Now, at the top of the document it talks about having two management companies, just like you had mentioned in that previous document we just talked about; right?

A Yes.

Q And it talks about inviting the management investors--management company part--joint venturers to become investors; right?

A Yes.

Q All right. Now, you have modified his proposal here to point out that it would be at an appropriate time in the future that this would happen; right?

A That's correct.

Q And the appropriate time in the future would be something that would be strictly within Wharf's discretion; right?

A That's correct.

Q Entirely up to you?

A That's correct.

Q With absolutely no standards to guide you?

A Well, I think that at a suitable time, I can't really give you any further explanation what it means.

Q Whenever Wharf finds it suitable; right?

A Suitable. I can't add anything more.

Q Certainly wouldn't be a time suitable to NYNEX or UIH--

A No.

Q --it would be simply Wharf's option?

A That's correct.

Q And Mr. Ng was supposed to tell this to UIH, right?

A No. I don't know to--there's an instruction for him to tell him, but--

Q Well, we'll get to that, then. Let me--

A Yes.

Q Let's push on.

A I don't recall the particular state of affairs at that particular time.

Q Well, if that's going to be a proposal to UIH that you'll invite them to invest at a suitable time in the future, you'd expect Mr. Ng to tell that to UIH?

A I--I can't really answer you. I don't know. I don't recollect the exchanges at that time.

Q Look down at the bottom where it says, "Internal consumption only;" do you see that?

A Yes.

Q And that's the part that's not supposed to be told to UIH and NYNEX; right?

A Yes.

Q And--

A Yes.

Q Pardon me?

A Yes.

Q And the first point says--talks about a shareholders agreement will be signed, but then Mr. Ng's back with it's for UIH it's going to be conditional on proof of financial capability within 30 days from license award; right? You see that?

A Yes.

Q And once again you have to tell Mr. Ng, no good for bid, also no good for Wharf; right?

A That's correct.

Q You don't want any conditional funding?

A I--on conditional aspects, yes, that's our--that's our approach.

Q In fact, in Exhibit 484 that's the first thing you circled on that page when Mr. Ng brings you a memo that says that funding capacity is conditional, you say, "No, no, no;" right?

A Yes.

Q And you give him this back, you give him 484 back and then he comes back to you with this one where he says, "UIH's funding would be conditional, "and you say, "No good "?

A Yes.

Q He's not getting it, is he?

A No.

Q And he's out there talking to UIH about what UIH's rights are going to be?

A Yes, he's discussing with various prospects in terms of the--

Q And you--

A --terms that we would be acceptable to us.

Q And you can see in one document after another that he's not getting it in terms of what your instructions are; can't you?

A He's on the constructive discussions with our prospective candidates.

Q Well--

A And I think that it could be a proposition from the prospective candidate, it could be lots of things, but the operation of this particular process is not an easy one. He has to deal with many, many parties and he has to insure that the deadline is met. So, of course, he be looking at various aspects. Of course, as an executive he be trying to test in terms of the various parameters and he say, look, you know, these are the suggestions I like to make for you to consider. And he comes back, I will consider and I'll tell him again. I don't think there's anything wrong with that because--I mean, this is an example of management who's trying to say,

look, I'm looking at this from this angle, what about it? About from another angle, but accommodation with something else. What about it?

So I think he's just trying to package it because this conditional point is very different from the conditional point that was said there. So I--I think that let's not rush to conclusions in terms of whether Mr. Ng is very thick or not. I think he's doing his job.

Q I didn't say thick and I wouldn't say thick. What I would say is, Mr. Woo--

MR. JENTES: Well, you said he was not getting it and you said it about three or four times. I don't know how you could make it clearer--

THE COURT: Let's address your remarks to the Court. If that's an objection, it's overruled.

Q (by Mr. Chase) Let me clarify, Mr. Woo. You got Mr. Ng in the middle here; right? Excuse me. Oh, he's inanimate.

You've got Mr. Ng in the middle here.

A Yes.

Q You got UIH over here.

A Yes.

Q You got you over here.

A Yes.

Q He's talking to you--

A Yes.

Q --he's talking to UIH?

A That's correct.

Q And in his talking to you, he is saying things that are contrary to your principals and your guidance and you're having to correct him on the three partners versus two and on the funding issues; right?

A No, I think what he is saying is that for proposition for him to bring, he would like to contain certain terms for me to consider. And I said to him, I said, look, on that term I do not like to consider in the overall context of things. He goes back, he thinks about it, he say, I can do it another way. He comes back with we discuss again, but--

Q Let me--

A --whatever discussion he has with the opposition partner or opposition party, the discussions are again for purposes of trying to find a proposal that's going to be presented to the Wharf Board for approval.

Q Let me stop you because we're going to let the jury go so they can--so they can get out at the right time and I'm jus going to ask you one more question and then I'll ask the Court if it wants to call it a day.

Is it your testimony that nothing in these communications raised a concern in your mind as to what was Mr. Ng saying to UIH? Is that your testimony?

A My testimony--I don't want to repeat again. He is proposing terms to the Board, to the company, to myself. And he get responses from me and from the Board when it comes to it final form.

Q All right. I'd like an answer to my question. And then I'll--and I want--

A Okay.

Q --to see if I can get it. Is it your testimony that nothing in this communication with Mr. Ng raised a concern in your mind as to what he was telling UIH? Is that your testimony?

A Yes.

MR. CHASE: Your Honor, I'd recommend we split.

THE COURT: All right. Come back tomorrow, please. 9:00 a.m.

(4:43 p.m.-Jury excused.)

* * *

(Testimony Continued on March 19, 1997; Transcript 3982)

(At 9:03 a.m. on March 19, 1997, in the United States District Court at Denver, Colorado, before the Honorable John L. Kane, Jr., U.S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, and with the jury present, the following proceedings were had:)

THE COURT: Go ahead, please.

MR. CHASE: Thank you, Your Honor.

PETER WOO,

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified further as follows:

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Woo, good to see you this morning.

A Good morning.

Q Thanks for coming by.

A Thank you for the invitation.

Q Mr. Woo, let me just clarify a couple of points before I go forward. The point in time we've been talking about is roughly mid-september 1992, correct?

A Yes.

Q And there's no question in your mind that Mr. Ng was aware of your policy that you weren't going to have UIH as a partner unless you had Nynex as a partner?

A Yes.

Q And you weren't going to have Nynex as a partner unless you had UIH as a partner?

A Yes.

Q All right, now let's look at Exhibit 486, please. And that would be probably in the white notebook there.

A Yes.

Q Now, 486 is a memo from Mr. Ng to you, September 17, 1992, and attached to it is the proposed structure that we were looking at yesterday, Wharf Cable, ownership and management, and then the bottom was internal consumption only. Remember we were looking at that--

A Yes.

Q --document yesterday?

A Yes.

Q Now, if you turn over the page in this same exhibit, you get to a September 18th letter, the next day.

A Yes.

Q And there you've got a memo from Mr. Ng to Mr. Fung and Simon Yu, and it says, "The chairman has approved an amended version of the ownership and management structure, and I attach a copy for your reference." Do you see that?

A Yes.

Q And then attached to this document--and of course a copy of this memo with the enclosure goes to you as well, right?

A Yes.

Q And then attached to this document is Wharf Cable ownership and management with your approved stamp or sign, and you've signed it, right?

A I can't recall I signed it.

Q That is your initials there, correct?

A Where?

Q I'm looking over in the upper right-hand--if you look over on Wc25937, where it says, "Approved,"and then it says, "P. W."

A That's the third one, the third page.

Q That's right.

A Okay.

Q You signed that?

A That was my initial and this was my writing.

Q And that's your approval?

A I said approved.

Q Right. Now, this document is divided into two parts.

The first part is called "Ownership and Management," "Wharf Cable Ownership and Management," and it talks about having first a management company or two management companies and then having Nynex and UIH as

part of the management companies then become investors; do you see that?

A Where?

Q Well, if you could look at the top half of this, where it starts with "To streamline the decision process," and then it goes on to "the investor group"--I'm looking at the second paragraph.

A Right.

Q "The investor group will initially be wholly owned by Wharf Communications. If bid is successful, it is intended to invite partners in the management group to take up no more than 40 percent in the investor group at an appropriate time in the future." Do you see that?

A That's correct.

Q And then under that it talks about this management group will comprise two management companies, each majority owned by Wharf Communications, and the first one would be co-owned with Nynex and the second one would be co-owned with UIH. Do you see that?

A That's correct.

Q And this is the structure you approved, correct?

A That's correct.

Q And then down at the bottom, under "Internal Consumption Only"--and I take it by that you're intending that this is not to be discussed with Nynex or UIH.

A That's an intention.

Q All right. Under "Internal Consumption Only": "A shareholders agreement will be signed after October 15, 1992, under which Nynex will, upon license, cable only or both cable and telecom, award subscribe 20 to 25 per cent of Cncl's capital." Do you see that?

A Yes.

Q And then the next paragraph, "A non-binding letter of intent will separately be signed under which it is intended that subject to proof of financial capability, within 30 days of license award, UIH will be admitted as a 10 per cent shareholder." Do you see that?

A Yes.

Q And if UIH does not get admitted, then Nynex or Wharf will own UIH's shares, right?

A Yes.

Q Anticipating a structure, of Wharf-NYNEX, right?

A I'm sorry?

Q Anticipating a structure of Wharf-NYNEX, no UIH, right?

A No. I think that the comment that's written here was a follow up of perhaps some of the remarks I made on the previous memo I wrote to Stephen Ng. And as far as this particular memo was concerned, Stephen Ng is really saying, "Now is this what I understood you to mean in terms of your notes?" and I basically say, "Well, yes, that's what I mean."

But I think that these notes are overrided (sic) by my overall view in terms of the three-party agreement. The separate non-binding letters of intents may be made here. I believe that these are for internal consumptions only means that this is something that we are considering, this is not a decision, it is for internal consumption. And I cannot remember or recall what happened in terms of future action as to what Stephen did with this memo.

Q Well, I'll tell you what--

A You should ask him.

Q --let me help you. Why don't you look at Exhibit 487?

A Okay.

Q Same date.

A Right.

Q September 18--

A Yep.

Q --1992.

A Right.

Q And it says, "Nynex-uih, negotiate deal based on chairman's direction"; do you see that?

A No.

Q Look at Exhibit 487. It's a weekly report to chairman of September 18, 1992.

A I don't have it.

MR. JENTES: The problem is it's not in the book.

THE WITNESS: I don't have it.

MR. CHASE: It's not in the book? Well, that is a problem. Sorry.

Q (by Mr. Chase) Let me hand you Exhibit 487, it's a memo from you to Mr. Ng dated September 18th, the same day that he dated the transmittal of your approved structure, and it says, "Nynex-uih, negotiate deal based on chairman's direction"; do you see that?

A Yes.

Q And the deal based on chairman's direction is what's contained on this document where you initial "Approved, Peter Woo," right?

A That's right.

Q And you authorized Mr. Ng, therefore, to go forward and discuss with UIH and Nynex what's contained on this approved document?

A That's correct.

Q And do you know what Mr. Ng then did with--

A That's right.

Q --UIH and Nynex?

A He discussed with them what I meant. As I said before, my instructions to him, as always, you discuss and have a constructive dialogue, you come back to me for my final approval.

Q Well, let me see if I understand what you're saying.

Did he go to UIH and tell UIH that "The chairman has authorized me to enter into a non-binding letter of intent with you and then you can go ahead and be with us on a non binding letter of intent"?

A Mr. Ng did not report to him--to me his exact discussions with UIH or Nynex.

Q And so you don't know what Mr. Ng told UIH or Nynex with respect to these instructions?

A No.

Q Now, it's true, is it not, that if he went forward with these instructions, you would have separate deals with UIH and Nynex, wouldn't you?

A Well, I think that I cannot answer a hypothetical question like that.

Q Well, it says a shareholders agreement with Nynex, a non-binding letter of intent with UIH, and that if UIH doesn't get its money, Nynex gets its shares and you have a Wharf-NYNEX deal.

A He discussed with them of a discussion paper, I suppose, but I gave him overall guidance in terms of the parameters that I thought would be useful to start these negotiations or discussions, but on a noncommittal basis.

Q Well, you didn't discuss this document, you just handed *it to Mr. Ng with the "Approved, Peter Woo" on it?*

A I can't recall what happened in terms of the actual handling of the paper.

Q Mr. Woo, in your testimony regarding this document,

Exhibit 484, you testified as to whether UIH would be allowed to come in would be up to Wharf's sole, exclusive, and absolute discretion; do you remember that?

A That's correct.

Q And--

A Whether we decide to invite them or not, it's our discretion.

Q And when you authorized this document about a non-binding letter of intent, you were still thinking in terms of Wharf's sole, absolute discretion as to whether and when it would invite UIH in?

A That is consistent with my thinking and my directions to Mr. Stephen Ng.

Q All right, make sure I understand this completely. I've blown up a piece of your testimony that we introduced by deposition. Let me just ask you, if what you've just said is consistent with what you said in your deposition, I'll read it and you can come down here and look--I'll tell you what, I'll give you a copy of it.

A Well, I have the document here, so you just tell me the page.

Q Volume 3 of your deposition, page 33, Line 7, the July 22, 1996 version.

THE CLERK: July 17th.

A July 17, I have it. Page 33?

Q (by Mr. Chase) Page 33.

A Which--

Q The 1996, the telephone one, Line 7, page 33. Are you there?

A Page 33, Line--

Q Line 7.

A Yeah.

Q All right, I'm going to skip over part of it and say--and focus on where it says, "But"--well, this didn't work very well--"we are going to be the one that has the overall discretion and judgment to say whether we wish at that time to invite them or not and whether they have performed to our satisfaction. This has to be absolute our own discretion."

Is that your intent as of this September time period as to what UIH's right would be?

A I'm sorry?

Q Is that your intent as of this mid-september 1992 time period as to UIH's right, it would be subject to your overall discretion, your absolute discretion?

A This is consistent with our handling of the invitation part of any equity investment and participation to any joint venture we have.

Q And did you direct Mr. Ng to tell UIH that that's the basis on which Wharf would go forward with UIH subject to Wharf's absolute discretion as to whether to let them in?

A My guidance to Stephen has been consistent.

Q So the answer is yes?

A My guidance to him is, as I've testified many times the last two days and today, in terms of the parameters, the process, and the decision making at the board level after I have a chance to approve it.

Q And you have no idea, do you, sir, as to whether he actually did tell that to UIH?

A Like I'd answered before, I have given him guidance, and he's an executive, he would have the discretion to deal with his matter as appropriate.

Q Let's talk about the technical cooperation agreement. Remember the technical cooperation agreement?

A Yes.

Q You testified that you thought this was an important agreement to Wharf and you talked to Mr. Ng about the agreement?

A That's correct.

Q Now, first of all, you never discussed the technical cooperation agreement with UIH, did you?

A I never did directly.

Q And--well, you never received a report from anyone about discussions with UIH?

A No. I--my discussions are solely with Mr. Stephen Ng.

Q But Mr. Ng did not report to you about his discussions with UIH, did he?

A I cannot recall any specific report back. My discussions with him has been fairly focused on a few issues, and I left him as the executive to carry out this particular drafting and execution of the TCA.

Q So I'm correct when I say that you do not recall Mr. Ng reporting back to you his discussions--

A I do not recall--

Q --with UIH?

A I do not--

Q Pardon me?

A I do not recall.

Q And you don't know whether anyone, either Wharf or UIH, intended the TCA to be the basis of UIH's and Wharf's relationship going forward, do you?

A I'm sorry, can you ask again?

Q You don't know whether either Wharf or UIH intended the TCA to be the basis of the relationship of those parties going forward?

A Well, I know Wharf intended for these TCA to be a document signed and binding.

Q Listen to my question. You don't know whether Wharf or UIH intended the TCA to be the basis of the of the relationship going forward?

MR. JENTES: Your Honor, I think the witness just answered it as to Wharf.

THE COURT: Overruled.

MR. CHASE: Can you answer it?

THE WITNESS: Can you ask again?

Q (by Mr. Chase) You don't know whether either Wharf or UIH intended the TCA to be the basis of the parties ' relationship going forward?

A I know Wharf intentions. I don't know UIH's intentions. I've asked Stephen Ng whether the TCA was signed, it was signed, and that's satisfactory to me.

Q Well, I'll tell you what, why don't you pull out Volume 2 of your deposition?

A Okay.

Q Let's do some reading here. This is the--

THE CLERK: Just a minute.

MR. CHASE: I'm sorry.

THE CLERK: That would be the May 23rd?

MR. CHASE: This would be May 23rd, 1995.

THE CLERK: I hand the witness a transcript of a deposition taken May 23rd, 1995.

Q (by Mr. Chase) Let's start at page 77, Line 18. And it's the same routine, I'm going to ask you whether I asked these questions and you gave me answers that are reported. You there?

A Yes, I am.

Q "Question: Do you have any information that Nynex, UIH or Wharf ever intended the technical cooperation agreements they signed to become the basis of their relationship?" "Answer: I can't recall." "Do you have any information that either Wharf, Nynex or UIH ever intended the technical cooperation agreements to become operative documents?" "Answer: I can't recall." You see that?

A Yes.

Q Now, you also don't know what services or whether any services were provided under the TCA, do you?

A That's Stephen Ng's department.

Q And you don't know whether anybody had any intent that any services be provided under the TCA, do you?

A I can only rely on the contract assigned.

Q And you don't know whether anybody ever intended the TCA to be an operative document, do you?

A Well, we certainly do.

Q Look over at 77, Line 23. Oh, I just did that one. We'll do it again. "Do you have any information that either Wharf, Nynex or UIH ever intended the technical cooperation agreement to become operative documents?" "Answer: I don't recall--I can't recall."

A No.

Q Right?

A No.

Q Now, you're aware, are you not, that no payment was ever made under the TCA?

A Based on the record that's been revealed to me recently, yes, I know that now.

Q Now let me read to you for a moment what Mr. Fung said about the TCA. Let me read to you from Mr. Fung's deposition and see if this was reported to you back in the 1992--September 1992 time period about the TCA. You can follow me up on the screen. I'm reading from page 450, Line 7: "I see. So once again we're talking about a packaging issue, correct?" "Answer: Yes. The entire document is for that purpose, for the packaging purpose."

"Question: For packaging?"

"Answer: Yes."

"Question: Was there ever any intent that this technical cooperation agreement actually be an operative agreement among the parties?" "Answer: I think that, you know, we had talked about the fact that we had written it here was legitimate in terms of the services that could be provided and that if at certain times that we had wanted to call on these that we could at least have the basis of a working document that could be used."

"Question: But was it the intent of the parties in September 1992 that the technical cooperation agreement become at some point an operative document?" "Answer: I don't think there was a strong intent, no."

"Question: Do you think there was any intent?"

"Answer: I can't be certain."

"Question: Pardon me?"

"Answer: I can't be certain."

"Question: Did Wharf have any intent that this ever become the basis of a relationship between UIH and Wharf?" "Answer: Between UIH and Wharf?" "Question: Right." "Answer: At that time, no."

"Question: Do you know if UIH ever intended that the technical cooperation ever be an operative document?" "Answer: I would say no." "And the entire purpose of the document as you understand it was packaging for purposes of the bid?" "Answer: Yes."

Do you follow that testimony from Mr. Fung?

A Yes, it's the first time I saw that.

Q Do you disagree with it?

A Well, it is Mr. Fung's viewpoint. I don't think that he is fully informed in terms of the discussions I had with Mr. Stephen Ng. When you recall asking me about the memo of 100 percent ownership of Wharf and we're told about two TCA's, and I was very concerned on the TCA's. I said to Stephen very specifically, I said, "There are a few things I want you to make sure that you make clear as far as the TCA is concerned." That in fact I paid my own personal attention to this matter shows the seriousness of the matter. The first point I said--

Q Mr. Woo--

A I'm just talking about what I--

Q Excuse me.

A --disagree with this.

Q Excuse me, sir.

A And I'll tell you the reason why I'm disagreeing with it.

Q I'll tell you what, you're going to have a chance, but we've got to finish at some point.

MR. JENTES: Your Honor--

THE COURT: It's not responsive, you can bring it out on redirect.

Q (by Mr. Chase) See, Mr. Woo, we're going to have to have questions and answers here.

A Yeah, you asked me what I disagreed with.

Q I asked you whether you disagreed with it, you said yes.

A And that's enough for you?

Q For the moment, yeah.

A Okay.

Q You can give your speech again when you want to give your speech. But for right now we're going to ask questions because we're going to try to finish you sometime this week. Now--

MR. JENTES: Your Honor, for the record, I object to--

THE COURT: Sustained.

MR. JENTES:--argumentative--

THE COURT: Sustained.

Q (by Mr. Chase) Now, Mr. Woo, you said you spoke with Stephen Ng, right?

A Yes, I did.

Q You're aware that Mr. Fung was the one speaking with UIH, correct?

A I am not aware who was speaking to UIH at that time, but I'm aware that I have direct discussions with Stephen Ng and he has the full discretion to deal with the counterparts.

Q I'll tell you what, let's ask this question: I'm going to show you some of Stephen Ng's testimony and ask if this is what he told you about the technical cooperation--

A Um-hum.

Q --agreement, whether this is what he reported to you.

(Whereupon, the following portion of a taped video deposition of Mr. Stephen Ng by Mr. Chase was played for the witness:)

"Did you believe that by signing this technical cooperation agreement you did in fact bind Wharf Cable to obligations under this agreement?" "Did I believe?" " Yes." "I don't remember." "You don't remember if you believed you were binding Wharf Cable?" "I don't remember." " Did you at any time believe that Wharf Cable was bound under the terms of this agreement?" "I'm sorry, the question was?" "Did you at any time believe that Wharf Cable was bound under the terms of this agreement?" "Did I at any time?" "Right, at any time." "I don't remember."

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Did he report that to you?

A He did not report to me as far as his deposition, no.

Q Well, did he tell you when he talked to you in September he didn't remember anything?

A No. I mean, our discussions in September were very, very clear.

Q Let's try this one, did he tell you this?

(Whereupon, the video taped deposition of Mr. Stephen Ng by Mr. Chase resumed:)

"Prior to this dinner in 1993, had you ever discussed the TCA with any UIH representative?" "I can't remember." "What did you mean in your memo here, 'They were careful not to take the bait'?" "I don't remember." "In what way were you using the TCA as bait?" "I don't remember." "Do you remember anything at all about why you wrote that sentence in Sentence 4 there?" "Why I wrote it?" "What it means." "It means what it says." "Why did you want UIH to activate the TCA at that time?" "I don't remember." "Why hadn't the TCA been activated up to that time?" "I don't remember." "What was the intent of Wharf at the time it entered into the TCA?" "I don't remember." "Did Wharf have any intent of ever having services provided under the TCA?" "Ask the question again, please." "Did Wharf have any intent of ever having services provided under the TCA at the time it entered into the TCA?" "I don't remember." "What was your intent, your personal intent with respect to the TCA?" "I don't remember."

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Now, Mr. Woo, Mr. Ng was your primary person dealing with UIH, correct?

A That's correct.

Q Look at Exhibit 1390, please.

A I don't have it in this volume, I think--

Q I think maybe it's--

A --it's a different volume.

Q --in a white book but it's probably--

A Which volume is that?

Q --in a later volume.

A Yes?

Q Because it's a later exhibit.

A 13?

Q 1390.

A I'm afraid it's not here again. You have a chance to give me a copy?

Q Well, certainly you're entitled to that. You know, I don't even--

A We should be buying a lottery, you know, every item you want it's--

Q Yeah. This is the April 29th letter. I think it might even--

A Yeah. Okay. April--

Q April 29, 1994.

A Right.

Q And this is Mr. Ng writing a letter to Mr. Schneider. Now, this is all the way at the end of the chart here. This is April 1994 we're talking about.

A It's 1994.

Q Right. And this is Mr. Ng writing to Mr. Schneider, and if you'll look on the second page of the letter--

A I'm sorry?

Q See on the second page where it says, "You are, of course, right to say--

MR. JENTES: Where are we. We're not even close.

MR. CHASE: I'm sorry, you're not.

Q (by Mr. Chase) Look on the second page of the letter.

A Can I read the whole letter first?

Q You're absolutely entitled to that.

A Yeah, I have not seen this before.

Q Okay.

(Whereupon, the witness reviewed the document.)

A Okay.

Q (by Mr. Chase) You read the letter now?

A Yes.

Q You've seen this letter before, haven't you?

A Not that I recall.

Q You're testifying that at this time, April 29, 1994, you weren't reviewing Mr. Ng's correspondence to UIH?

A I didn't recall this particular letter.

Q Well, look over at your deposition, Volume 1, page 189.

THE CLERK: May the 22nd, 1995.

THE WITNESS: Okay.

Q (by Mr. Chase) You there?

A Yes.

Q Line 3: "Now let me ask you to look, if you will, at Exhibit 2061, which is a letter of April 29, 1994, from Mr. Ng to Mr. Mark Schneider and ask if you will please read this letter." "Answer: This is April 1994." "Question: April 17, 1994, correct." "Answer: Okay." "Question: Did you see that letter before it went out?" "Answer: I recall seeing the letter."

A Hmm.

Q "Question: Before it went out?" "Answer: I don't recall."

A Hmm.

Q See that?

A Yes.

Q So at that time you recalled having seen this letter.

A Well, that's what I said.

Q All right, now, let's get to the sentence I want to ask you about, where Mr. Ng tells Mr. Schneider, "You are of course right to say that we did not envisage the technical cooperation agreement--"

A What line is that?

Q I'm sorry. I'm looking at the second paragraph on page 2.

A Oh, okay.

Q On the screen there.

A Back to the letter.

Q Of the letter.

A Okay.

Q You there?

A Yeah.

Q "You are of course right to say that we did not envisage the technical cooperation agreement governing our future relationship when we entered into it." Do you see that?

A Yes.

Q Now, did Mr. Ng discuss with you in September 1992 that he did not envisage the technical cooperation agreement governing the relationship with UIH?

A I do not recall that particular conversation as you put it.

Q All right, now you've testified that you thought this was important and so you had some input into it with Mr. Ng, correct?

A That's correct.

Q Let's look at Exhibit 531, which is the technical cooperation agreement.

MR. JENTES: Before we leave the letter, could we have Mr. Chase read, in fairness, the whole sentence that he directed Mr. Woo to?

THE COURT: Yes.

MR. CHASE: I'll be glad to.

Q (by Mr. Chase) Mr. Woo, if you can go back to that highlighted portion?

A Yes?

Q And then it says, "however, it is currently the only agreement we--however, it is currently the only agreement we have actually made, and so it had occurred to me that it would form the basis for ensuring that UIH obtain some form of recompense for the work that you have done." Do you see that?

A Thank you very much.

Q Does this change any of your answers to my questions about whether you and Mr. Ng discussed in September 1992 that the TCA would not be the basis of the relationship going forward?

A I do not recall that conversation at all.

Q You didn't have it in September '92, did you have it any time after September 1992?

A I can now answer your first part of the question when you asked me that. We have conversations, but you don't allow me to say what the conversations were.

Q Mr. Woo, I'm sorry. You're going to be able to give your speeches in response to your counsel's questions. At this time I'm trying to get you to answer my questions.

A Yes.

Q And my question is, and I've asked you several questions, about your discussions with Mr. Ng, and one of them is, did he discuss with you in September or any time that UIH and Wharf did not envisage the technical cooperation agreement being the basis of their relationship going forward?

A If I can cover the question this way: the discussions was always on the basis that at that time Nynex was going to get their board approval in October. That was the basis of discussions. So therefore it is important that the technical cooperation agreement is signed by all parties if possible, and anticipating that once Nynex gets their board approval, the technical cooperation agreement would probably be superseded by the actual joint venture, three-party joint venture agreement. If I may answer your question that way.

Q Mr. Woo, it's a fact, is it not, that you don't have any idea what the parties' intentions were under the TCA?

A It is a fact that I know very clearly in terms of the Wharf requirements within the TCA and Wharf expects that agreement be signed on the basis of the content of the TCA. And if the contents of a proposed--of the proposed TCA at that time cannot be agreed by either Nynex or UIH, my instructions to Stephen Ng is that we can do without them and we don't need the TCA and let it go, we'll go with the 100 per cent our investment in the deal.

Q Now you clearly remember having this discussion with Mr. Ng back in September 1992?

A Absolutely.

Q All right. Then you know what I'm going to do? I'm going to get you to get your deposition out again.

A Okay.

Q And I'm going to ask you to turn to page 77. This is Volume 2. Actually, I'm going to start you on page 71, same volume. I'm going to start you on page 71, Line 14. Actually, I'm going to start you on Line (sic) 71, Line 10. Are you there?

A Yes.

Q "Question: Did you have any discussions about what the parties were expected to do under the technical cooperation agreement?" "Answer: No recollection." "Question: Did you have any recollection of what the parties' intentions were with respect to the technical cooperation agreement?" "Answer: No recollection."

Now I'm going to ask you to look over, Mr. Woo, at page 77, Line 18, same volume.

A Right.

Q "Question: Do you have any information that Nynex, UIH or Wharf ever intended the technical cooperation agreements they signed become the basis of their relationship?" "Answer: I can't recall." "Question: Do you have any information that either Wharf, Nynex or UIH ever intended the technical cooperation agreement to become operative documents?" "Answer: I can't recall."

Now, Mr. Woo, I'm going to ask you to look over at page 146--no, page--go to the first volume. Go to the first volume, page 142 of the first volume.

A Yes, I've got it.

Q Actually, I don't.

A Bingo.

Q All right, I'm sorry, it's 142 of the second volume. I'm sorry, 142 of the second volume, the one we've been working on.

A Yes.

Q Now, looking at page 142, Line 7.

A Yes.

Q "To the best of your knowledge, as of--as at December 24, 1992, had any services been provided by UIH or Nynex pursuant to technical cooperation agreements?"

"Answer: To my knowledge--to my best knowledge, I don't know." "As of December 1992, was there any intent by UIH and Wharf to implement the technical cooperation agreement?" " Answer: I don't recall." "Do you know whether following December 24, 1992, any services were provided by UIH pursuant to a technical cooperation agreement?" " Answer: I don't know." "Question: Do you know whether any services were provided by Nynex after that date pursuant to a technical cooperation agreement?" "Answer: I don't know."

Now, Mr. Woo, let me ask you to go over to page 140--

MR. JENTES: Your Honor, if I may interrupt, the line of interrogation that was just read to the witness is in no sense impeaching, he said that he didn't know whether or not they had performed services, he didn't know whether or not they had paid, etc. The long reading is in no sense impeaching to what he said in that--

MR. CHASE: May I focus on exactly what is impeaching?

THE COURT: Yes.

MR. CHASE: From that long reading, which put it into context, you look at Line 11: "As of December 24, 1992"--this is Line 11--"as of December 24, 1992, was there any intent by UIH and Wharf to implement the technical cooperation agreement?" "Answer: I don't recall." I believe that's impeaching, Your Honor.

THE COURT: All right.

Q (by Mr. Chase) Now look at page 146.

MR. JENTES: With all due deference--

THE COURT: Excuse me--

MR. JENTES: --I don't think it was.

THE COURT: Well, it's up to the jury to decide.

MR. JENTES: I agree with that, Your Honor.

THE COURT: All right. I'm not making--

MR. JENTES: No, I understand that, Your Honor, but I don't think he's entitled to say it's impeaching or not, I agree with you, that's for the jury to decide.

THE COURT: You're asserting it's not, he's asserting it is, the jury can decide.

MR. JENTES: I agree with that.

THE COURT: That's why they're in charge.

MR. JENTES: I agree with that.

MR. CHASE: Just responding to his objection.

THE COURT: All right.

Q (by Mr. Chase) Tell you what, Mr. Woo, put it aside for a minute, let's go to the technical cooperation agreement itself. You there? That's Exhibit 520, do you have that one? I'm sorry, it's not 520. I just had it here. Gremlins got me, I'm sorry. It's 531, 531. That's the agreement itself.

A It's 531.

Q 531.

A Mr. Clerk, can I pass these back to you first? I've got too many books here.

Q You got 531 there, Mr. Woo?

A I'm getting it. Right.

Q Did you ever read this agreement?

A No.

Q In any version?

A No.

Q So you just discussed with Mr. Ng the broad outlines of what you wanted in it?

A I discussed with him a few specific points that I thought should be incorporated.

Q So you didn't discuss with him why the agreement was with Wharf Cable instead of Cable Network Communications?

A I discussed with him because it is in conjunction with the bid with Wharf Cable. We did not talk about in terms of which corporation would be signing the TCA. From the propositions that's been made to me from Mr. Stephen Ng I made a decision of 100 percent Wharf taking up the equity, which means Wharf Cable, and TCA's, the two TCA's that attached the ownership. That was a discussion, that was a concept that was discussed, and I added two points which I

thought was important. I believe I testified previously. Do you want me to repeat that?

Q We'll get back to those and I'll give you an opportunity, but right now I'm just talking about the parties. It's a fact you had no discussion with Mr. Ng as to why Wharf Cable was the designated Wharf party on the TCA, right?

A We did not discuss the particular specific structure of that.

Q All right. Now I'd like you to keep that one available but turn over to 524. I believe that's in the jury book.

A 524?

Q 524--

A Yeah, okay.

Q --is a letter from your lawyers to various parties transmitting a draft of the technical cooperation agreement; do you see that?

A Yes.

Q And the draft that's attached has as the Wharf entity Cable Network Communications Limited; do you see that?

A On page--?

Q On the first page of the draft technical cooperation agreement transmitted by your lawyers to various parties.

A The covering memo? The covering page?

Q Turn over the covering memo and go to the draft that says it's the first page of the draft agreement; do you see that?

A Yes.

Q Where it says, "Cable Network Communications" in the draft, do you see that?

A Yes.

Q And you had no discussion with Mr. Ng or anybody else as to why Cable Network was named--

A No discussion.

Q --and then why it was changed to Wharf Cable?

A No discussion.

Q All right, let's go back to the technical cooperation agreement itself, and I'll ask you--see if you had any other discussions here. Look over at Paragraph 2 of the actual technical cooperation agreement. This is the one that's Exhibit 531.

A I'm sorry?

Q Exhibit 531.

A 531.

Q And look at Paragraph 2.

A Paragraph 2.

Q You there? Do you see--

A No, I don't know which one you're talking about.

Q Well, it says, "Agreement conditional," it's numbered Paragraph 2 on page 2.

A Yes, I have it now.

Q All right. Now, it says, "This agreement, other than certain clauses, are conditional upon the award by the government of Hong Kong of a subscription television license." Do you see that?

A I see that.

Q And one of the things that would be conditional on the award of the license are the general duties of UIH set forth in Paragraph 4, right?

A Yes.

Q Did you discuss with Mr. Ng that UIH had no duties or responsibilities until license award under this agreement?

A As I said, I discussed a few points only. I did not--

Q Did you discuss this--

A --go into the actual drafting of this document.

Q So you didn't discuss this point with Mr. Ng?

A I don't recall discussing this particular point.

Q All right, let me ask you to turn over, then, to the one you say you did discuss, and that's Paragraph 7 under "Independent Contractor"; do you see that?

A I'm sorry?

Q See where it says "Independent Contractor" down at Paragraph 7, numbered Paragraph 7?

A Yes.

Q And you testified, I believe, that you did discuss this paragraph with Mr. Ng, particularly the part that says, "Nothing contained in this agreement or in the relationship of the company and UIH shall constitute or be construed to create a partnership or joint venture between the company and UIH"; do you see that?

A Yes, I do.

Q And you testified that you discussed this with Mr. Ng?

A I did not discuss the particular clause details, I discussed with Mr. Ng in terms of a concept. The concept is that, fine, have a technical agreement, make sure that that does not mean a right to invest or a joint venture or partnership. I made that point as a concept to Mr. Ng and Mr. Ng carried that concept in terms of any drafting.

Q So you didn't see the language that actually came out--

A I did not--

Q --of that--

A --see the language.

Q All right, now as you look at the language today, you see it talks about not having a joint venture between UIH and the company, right?

A That's correct.

Q And if you look at who the company is under this agreement, that's Wharf Cable, correct?

A That's correct.

Q And so it would have absolutely nothing to do with any other Wharf entity, would it?

A Based on the drafting here. I can only rely on the drafting.

Q Based on the--

A I have no other comments.

Q --document signed by your company.

A That's correct.

Q All right, now, you further testified that you talked about Paragraph 14.8 dealing with notice of terminations and additions--changes and additions to this agreement.

Pardon me, somebody--did I do something wrong here? I mean not as a general proposition. I'm not asking for your blessings.

Sorry, we had some commotion here that distracted me. 14.8 of this technical cooperation agreement. Did you say

that you discussed with Mr. Ng having this paragraph in the document?

A I discussed with him the concept in terms of to make sure that the agreement by itself should make a clause there that says no oral agreement.

Q No oral agreement before or after the TCA?

A No, I just say put that clause in.

Q Well, this is kind of boiler plate, isn't it?

A I don't know. I mean, I don't--I don't categorize things or generalize things by calling boiler plate, but I did make a point. That's all I can remember.

Q You never saw the language?

A I didn't see the language.

Q Now, the language talks about no oral agreements to change this agreement, right?

A Yes.

Q Do you know of any oral agreements that anybody's contending changes any of the terms of this--

A No.

Q --agreement?

A No.

Q Now, you had prior to this time--in fact going back to February 1992--a technical cooperation agreement with Nynex, did you not?

MR. JENTES: Excuse me, Your Honor, if we're about ready to leave this exhibit, may I make a fairness reading from Paragraph 7?

THE COURT: Yes.

MR. JENTES: Paragraph 7 in its entirety reads: "Independent contractor. In the performance of his duties and responsibilities under this agreement, the consultant shall be and shall act solely as an independent contractor, and nothing contained in this agreement or in the relationship of the company and the consultant shall constitute or be construed to be or to create a partnership or joint venture between the company and the consultant or be construed to appoint or constitute the consultant as an agent of the company for any purpose. The--"

MR. CHASE: Excuse me, let me interrupt. You're not reading it right. Where is this word the "consultant" in here?

MR. JENTES: I'm reading from Paragraph 7 of--

MR. CHASE: We have different--

MR. JENTES:--the document you referred the witness to, which is Tx524.

MR. CHASE: I'm reading 531, which is the signed technical cooperation agreement. It doesn't say any such thing.

MR. JENTES: But it's in both documents, but you referred him to the draft document, and I'm reading the draft document's language that you pointed him to.

MR. CHASE: I'm sorry, so you're talking about the draft that was superseded. Go ahead. Read on.

MR. JENTES: I'll be happy to read the final language, which is essentially the same.

MR. CHASE: Well--

MR. JENTES: You referred him to this language. May I continue?

THE COURT: Yes, go ahead.

MR. JENTES: "The consultant shall have no right or authority, express or implied, to commit or otherwise obligate the company in any manner whatsoever unless otherwise specifically authorized in writing by the company. The consultant shall have no right or interest in the company or in the Catv system, nor any claim or lien with respect thereto arising out of this agreement or the performance of the services here under." And I won't read the language from the final version of the TCA, but it's almost word for word the same.

Q (by Mr. Chase) Mr. Woo, you've heard your counsel's reading of the draft Paragraph 7? You heard that?

A Yes, I have.

Q Does that change any of your answers?

A No.

Q Do you know of any claim by anybody in this case that UIH is trying to claim an interest in Wharf through the TCA?

A I don't know.

Q You ever hear of any such claim?

A I don't know.

Q Did you ever hear of any claim that UIH is trying to claim an interest in Wharf by virtue of services performed under the TCA?

A I'm sorry?

Q Do you know of any claim, in this case or anywhere else in the world, where UIH is trying to claim an interest in any of your companies as a result of services performed under the TCA?

A The only claim I know is the one that we're discussing in this courtroom.

Q And that's not a claim for--that's not a claim for an interest as a result of services performed under the TCA, is it?

A I don't know of any other except this one.

Q Let's go back to where I was. You had a technical cooperation agreement with Nynex back in February 1992, did you not? I believe you testified to it on direct?

A 1992, yes.

Q This is Exhibit 199 which your counsel went through with you. It's going to be in your black book, the ones that you were working off of yesterday, I'm sorry.

A What's the number?

Q 199. Do you--

A Yes.

Q --have that? This is a February 1992 cooperation agreement between Wharf Communications and Nynex Network Systems, right?

A That's correct.

Q Now flip over, please, to page 24, Paragraph 24.2. You got it?

A Yes.

Q Now that paragraph, you've seen language like that in many documents, have you not?

A Can I read it?

Q Please.

A I may have.

Q Well, the language "This agreement supersedes and invalidates all other commitments, representations, warranties, and other agreements relating to the subject matter hereof," etc., that's fairly standard language in commercial contracts, isn't it?

A Not in every commercial contract. It depends on the situation.

Q Do you have a name for this kind of clause? It's called an integration clause over here, do you have a name for that kind of clause?

A I'm not a lawyer, so I can't be in a position to give you a name for it.

Q All right. In any event, you had this clause in your cooperation agreement with Nynex from February 1992, right?

A From reading of this document, yes, but I've not been involved in drafting of this contract.

Q All right. Let me ask you to turn back to the draft that we've been talking about, the draft technical cooperation agreement with UIH.

A Yeah. Which--

Q That's Exhibit 524. I'm sorry, your counsel has an objection.

MR. JENTES: No, I have a fairness reading from the cooperation agreement that is Tx199, and at Paragraph 24.4, which is two paragraphs after the one you read to Mr. Woo. It reads: "Notice of termination changes in additions to this agreement as well as any additional or supplemental agreements to this agreement must be made in writing. Additional oral agreements are invalid. Requirement to use the written form may be waived only if in writing."

Q (by Mr. Chase) Does anything that your counsel just read change any of your answers?

A No.

Q Now, what he just read is almost the same exact language that then appears later in your technical cooperation agreement with UIH, right?

A I'm sorry?

Q Never mind, you don't--it would require too much memory.

Let's go back to Exhibit 524, the draft technical cooperation agreement with UIH.

A Which exhibit again?

Q 524.

A All right.

Q This is the draft. And I want you to think about the language that I talked to you about that was in your Nynex agreement that I called an integration clause, 24.2, where it says, "This agreement supersedes and invalidates all other agreements." Remember that language?

A Yes.

Q Now look at the draft you have of your technical cooperation agreement with UIH.

A Yes?

Q And look at 14.7 there with a line running through it.

A Yes.

Q Just in case the point's lost on anybody. The language that's deleted from the draft TCA with UIH is virtually the identical language that you had in your 1992--February '92 agreement with Nynex, right?

A Right.

Q You discussed with Mr. Ng the deletion of this?

A I never discussed it. As I mentioned before, I only discussed a few points that I specified.

Q To this day have you discussed with Mr. Ng why the language "This agreement supersedes and invalidates all commitments, representations, warranties, and other agreements relating to the subject matter hereof," to this day have you discussed with Mr. Ng why this language was omitted from the technical cooperation agreement?

A No.

Q To this day have you discussed with Mr. Ng what commitments, representations, warranties, and other agreements were being preserved as a result of omitting that language from the agreement?

A There were no agreements.

Q Listen to my question. To this day have you discussed with Mr. Ng what representations, commitments and agreements were being preserved as a result of eliminating this language from the technical cooperation agreement?

A Have I discussed? In a general context, there are no agreements between the parties involved because we have never extended an invitation to the parties.

Q But you have no idea why this language was taken out of the technical cooperation agreement?

A I was not involved in the drafting.

Q So the answer is you have no idea?

A I have no--I have not been involved in the drafting.

Q Mr. Woo, let me follow up here, move forward a little bit, to late 1993. And you discussed in your direct examination the idea of trying to make a payment to UIH under the technical cooperation agreement, or was it what you were calling an ex gratia payment?

A What's the question?

Q In 1993, late 1993, you testified that you were trying to make some kind of a payment, or you were discussing with Mr. Ng making a payment to UIH; do you remember that?

A A discussion with Mr. Ng on the subject. It was suggested and I agreed that we should look at the cost that's been incurred for the developments, the development costs, which both Nynex and UIH incurred. And given the discussions that Mr. Ng has with me and his dialogues with UIH, it was considered a right thing for us to think of at that point in time, yes.

Q All right. Look at Exhibit 1330, please, and that's going to be in the white book.

A 1330. Yes, I have it.

Q All right, now, this is a letter from Mr. Schneider to Mr. Ng of December 13, 1993, and this is a letter that was referred to you for your attention, right?

A Yes.

Q In fact, you wrote on the letter.

A Yes.

Q And that's your handwriting down in the lower right?

A Yes.

Q Where it says, "Be careful, must deflect this--how?"

A Yes.

Q Now, the letter states, "Regarding the TCA activation "--now this is all the way in December 1993--"Regarding the TCA activation, we are happy to accept activation and payment for our services under the clear understanding that we are not in any way prejudicing our position that we have been working under the expectation of an investment into Wharf Cable. We have spent a very large sum--we have spent very large sums in providing you business planning, engineering personnel, location, equipment purchasing, and other analysis and advice, which we believe exceeds the value of any payments under the TCA. As you know, the purpose of the TCA was designed for the bid and that we clearly had no intention of using that document as the basis of a consulting relationship. We are not consultants, we are investors. You have always understood this. We would

happily accept expense reimbursement subject to the above understanding." Do you see that?

A Yes, I saw that.

Q Now, following this letter, you didn't authorize Mr. Ng to write a check to UIH for services rendered under the technical cooperation agreement, did you?

A No, I didn't.

Q Look over at Exhibit--in fact, you wrote on this thing, "Be careful, must deflect this--how?" didn't you?

A That's correct.

Q All right, now look over on page--at Exhibit 1342, same volume.

A Which exhibit?

Q 1342. This is a document that you testified about on direct.

A 1342, right.

Q All right. Now here, this is also referred to you, right?

A Yes.

Q And you make your comments to Mr. Ng. This is the one where you say, "I'm not pleased with the response from Mark."

A Yes.

Q And again, Mr. Schneider is saying to you, "Okay, if you want to pay us under the TCA, go ahead, but we're not waiving our rights, we don't want to prejudice our rights." Do you understand that?

A Yes, I understand that.

Q And you didn't make a payment to him, did you?

A I didn't make a payment to him because--oh, you don't want to hear my comments.

Q I absolutely want to hear your comments.

A Okay.

Q Go.

A Well, I think that the series of letter here and my comments here relates to my meeting with Mr. Schneider on November the 3rd where the excuse that he's making about prejudicing his position in these two letters were contrary to my discussions with him in November 3rd, and therefore I was quite unhappy in terms of discussions I had and that I feel that clearly there is now an intention to change their position, and that's when they don't have a right. They are now trying to say that they have a right by saying that they don't want their right to be prejudiced. I thought that my comments here completely related to that particular experience I had.

Q So you were not willing to make any payment unless UIH agreed with you that it had no right to invest in the project?

A No, I think that as far as we're concerned, our thinking has always been that yes, this is the right way to approach the issues, however, if the issue of rights start to be the issue that Mr. Schneider and UIH wishes to raise, it is vital that we deal with that to ensure that it is dealt with clearly.

Q Well, let me look at this a different way. You wanted to pay the man for UIH's services, right?

A I wanted to ensure that from the discussions that I hear, from the propositions that I receive, for me to consider, that the direction that UIH wished to pursue, i. e. a two-party joint venture, was inconsistent with in fact the first letter Mr. Mark Schneider wrote us in terms of saying that with a large and a complex project like the Hong Kong project, there must be more than two partners. I felt that a deviation from that principle, which we hold so importantly and which UIH had held so importantly, that unless I see a very strong reason to deviate from the fundamental principle, I'm not convinced, I don't see any real arguments for that, that a two-party joint venture proposition is really not on.

That being the case, after the bid, our public announcements and our notification to all the parties so that we would at an appropriate time in the future consider inviting investors into the company. And this is our intention, and that intention basically is consistent with our three-party joint venture concept.

Now, when from my reports over the letter part of 1993, that seems that UIH is fairly clear in terms of their proposals to us, that they only wish to talk about a two-party joint venture. So yes, we considered it, and we felt that it is still inconsistent with our aspirations and goals. And therefore it would appear that at that point in time these proposals should not continue. And we thought that that being the case, well,

we should then say, "Look, we all tried very hard with good intent to arrive at a three-party joint venture before September 30th. Of course we found out in December, late December, that Nynex finally cannot give us a firm proposal, and their suggestion is to wait for station launch, which we all agreed. And--

Q Mr. Woo, let me interrupt you, Mr. Woo, because I don't know how long you're going to go, but I'd really like an answer to my question. And I appreciate the speech, but I want you to answer my question.

A I'm not giving you a speech, I'm just giving you the background in terms of why--

Q I wanted you to answer--

A --I put these comments down.

Q --my question. My question is--

MR. JENTES: Your Honor, I object again to the arguing--

THE COURT: It's not arguing. He's entitled to his answer.

MR. JENTES: I think Mr. Woo is attempting to answer him.

THE COURT: He may be, but I think he's entitled to his answer.

THE WITNESS: Yeah, okay. The objection's overruled.

MR. CHASE: Well, I wish we had a court reporter here so I could have the question read back.

THE COURT: That's another government economy that I have no control over.

Q (by Mr. Chase) I was getting back to this business here in Exhibit 1330 where--and Exhibit 1342 where you want to pay UIH off, right?

A Yes.

Q Why didn't you? Why didn't you just write them a check and--

A Because.

Q --and let the issue of ownership be something to decide later?

A Well, the reason is that, as I've given, that we want to make sure that these matters are held and settled and dealt with here, because it seems to be uncertainty in terms of the various views. And I don't think that anyone would think that it is very tidy to say that "Look, there's a dispute, why can't we look at the overall thing?" Because the fundamental basis of that dispute is precisely the crux of the issue. And I felt that it is important to--since this is contrary to my meeting with Mr. Schneider, which I felt very, very surprised, and we've got to clear it before we make the payments that we suggested.

Q So you wanted it wrapped up and settled all at one time?

A At this point in time, I think that's the right thing to do.

Q Thank you.

MR. CHASE: Now, Your Honor, I'd suggest we take the morning recess.

THE COURT: Okay. Fifteen minutes about, please.

(10:15 a.m. - Jury excused.)

THE COURT: Be in recess.

(10:15 a.m. - Recess accordingly.)

(At 10:30 a.m. on March 19, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you.

(10:30 a.m.-Jury present.)

MR. CHASE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Woo, do you recall the bid proposal was submitted September 30, 1992?

A Yes.

Q And as of that time it was clearly your intent and you believe the intent of your company that UIH wouldn't have an investment right without Nynex and Nynex wouldn't have one without UIH?

A That's correct.

Q Okay, and it was Mr. Ng's job to communicate that clearly to both UIH and Nynex?

A I gave Mr. Ng my guidance and he follows the guidance to do what's appropriate.

Q You, yourself, didn't communicate with Nynex or UIH on this subject?

A I have--in September 30th, no.

Q Well, at any time prior to September 30th.

A To the best of my recollection, my meetings with Nynex people I may have covered these areas. I can't recollect specific incidents.

Q But certainly not with UIH?

A No, the first time I met Mr. Schneider was on November 3rd.

Q 1993?

A 1993.

Q Okay.

A Yes, that's correct.

Q Let me show you a clip from Mr. Ng's deposition, and I'm going to ask you a question about this communicating.

(Whereupon, the following portion of a video tape deposition of Mr. Ng by Mr. Chase was played for the witness:)

"Let me just make sure I understand your last answers here, make sure we don't have too many negatives in. Did Wharf have an intent to allow Nynex to become an investor without UIH?" "No, Wharf did not have that intent in September 1992." "And did Wharf have an intent to allow UIH to become an investor without Nynex becoming an investor?" "I don't believe Wharf had in September such intent." "And did Wharf have the intent that neither could become an investor unless the other one become the investor? "Can you state the question again?" "Did Wharf have an intent in September 1992 that neither could become an investor unless they both became an investor?" "I believe that was Wharf's intent."

"And was that intent disclosed to anyone at Nynex?"

"I don't remember." " Was that intent disclosed to anyone at UIH?" "I don't remember."

"Now, you testified a few moments ago that it was Wharf's intent as of the time bid that it would offer equity participation to UIH and Nynex, but not to either one alone, correct?" "Correct."

"When did Wharf formulate that intent, to the best of your knowledge?" "Fairly early on but I can't remember precisely." "When you say 'fairly early on,' do you mean a matter of days, weeks, or months prior to--" "Not years. I can't remember." "Well, was it before September 1992?" "I can't remember." "Was it a matter of days before September 30, 1992?" "I would think so." "Do you think it was more than just days?" "I can't remember." "Was it as much as a week?" "I cannot remember."

"What did you tell UIH about that subject?" "I can't remember." You can't remember discussing that subject

with them at all?" "The subject of--?" "The fact that UIH could not invest unless Nynex invested." "I don't remember."

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Now, Mr. Woo, Mr. Ng never did report back to you as to what he told, if anything, UIH or Nynex, did he?

A Based on the testimony or the deposition I heard today.

Q I'm not asking about that, I'm asking, he never reported back to you what, if anything, he told UIH or Nynex on that subject, did he?

A My comments to you before, I hope I don't need to repeat that on those basis, because I gave him a broad guideline. I gave a broad guideline.

Q I'm going to stop you for a second because we all understand--

A Yes.

Q --that you gave him a guideline.

A But--

Q But we understand that.

A Right.

Q My question to you is--

A Yes.

Q --he never reported back to you what, if anything, he told UIH or Nynex?

A Well, that's not the working relationship demands, because I would ask him to do whatever's appropriate.

Q And then you never followed up with UIH or Nynex to see if whatever he did was appropriate?

A His job is to have constructive conversations and discussions with various prospects and bring back proposals to the company, just like any party in this particular situation, just like Mr. Duffy brought proposals back to Nynex for their board to consider. Of course the board said no. I mean, that's par for the course. So I think Mr. Ng is not doing something very dissimilar to what Mr. Duffy would be doing, and I don't think that at this point in time we are even aware of the requirements of Nynex as an overall policy. We have no idea. They never told us their general policies.

Q Let's talk about Mr. Duffy for a second. He's Nynex's man-on-the-spot there in Hong Kong, right?

A That's correct.

Q And we've had the benefit of a day of Mr. Duffy here in court. Let me share with you some of Mr. Duffy's testimony on this subject. This is from page 1048 of Mr. Duffy's examination here in this case. It's up on the screen there. I'm looking down at Line 22, and I think I'm asking the question. "All right. And nobody ever told you that your investment right would be subject to something that UIH did?" "Answer: We never had an investment right that I recall." "Question--"

MR. JENTES: It's not on the screen.

MR. CHASE: It is.

MR. JENTES: It's on the screen but you don't have the thing you're reading.

MR. CHASE: How's that possible?

THE WITNESS: Okay, I've got it now.

MR. CHASE: Yes, it is.

MR. JENTES: You've got to move it down about four lines.

THE WITNESS: Okay.

MR. CHASE: I still don't get it. Hold on a second. I had it on my screen, what's wrong with your screen?

MR. JENTES: Well, you're starting--

MR. CHASE: I'm starting with Line 22.

MR. JENTES: Oh, I'm sorry, I thought you were--

MR. CHASE: All right.

Q (by Mr. Chase) This is Duffy's testimony, Line 22, my question, "All right. And nobody ever told you that your investment right would be subject to something that UIH did?" "Answer: We never had an investment right that I recall." "Question: Any of your reasonable expectations of having an investment right would be subject to what UIH did. You were never told that?" "I'm really not sure I understand what you're saying. I--d" "Well, you told me and you told us that Nynex would provide services if it had a

reasonable expectation of investing, right?" "Answer: Yes, exactly right." "Question: Was that reasonable expectation of investing in any way, shape, or form conditioned upon UIH also investing?" "Answer: No." "Question: No one ever told you that it was, did they?" "Answer: No, they didn't."

Now that's Mr. Duffy's testimony.

A Um-hum.

Q Did he ever tell you otherwise?

A He and I never had a conversation on the subject.

Q You ever talk to Mr. Van Demark from Nynex?

A No.

Q Let me see what Mr. Van Demark says. You remember Mr. Van Demark, he was another man on the ground for Nynex at this point in time, and he's asked this question in his deposition, page 107--see if I can queue this up--"Question"--Line 14--"Did you ever understand at that time or any time that Nynex's rights or opportunities to invest in Wharf was dependent upon whether UIH would invest?" "Answer: No, that was not my understanding." "Did you ever have any understanding that UIH's rights or opportunity to invest would be dependent on Nynex investing?" "Answer: No." "Were you ever told that Nynex's right to invest would have to be approved by the Wharf Board of Directors?" "Nynex's right to invest in Wharf?" "Right." "And the joint venture?" "Right." "No, I don't think I was."

Now, did you ever talk to Mr. Duffy--I mean Mr. Van Demark about whether he was told that Nynex's rights would depend upon UIH?

A I have not talked to Mr. Van Demark.

Q So you didn't talk to Mr. Van Demark, Mr. Duffy, or anybody from UIH about that subject?

A I have not talked to them.

Q Let me talk about something a little bit different here. After the bid--now we're in October 1st going forward--first of all, the bid, you turned out to be the only bidder, right?

A After we submitted bid we found out.

Q You didn't know beforehand?

A We didn't know.

Q And when you were chosen as the only bidder, you still had to go through a scrutiny process by Pete Marwick and by the government before they would approve your bid?

A I believe there was a process.

Q And there was concern at your company that even though you were the only bidder you still could have your bid rejected if the government didn't accept it?

A That's correct.

Q And because you were the only bidder, you might even be held to a higher standard because the government would

be measuring you against an absolute rather than against a competitor?

A You're asking me a hypothetical question?

Q I'm asking you the mood and the views at your company.

A I don't know if that's entirely correct.

Q You're a basketball fan, right?

A I watch basketball.

Q And you understand the term "slam dunk"?

A Yes.

Q Okay. Means an easy shot, right?

A I see people miss it.

Q I see them, too. This was--

THE COURT: You obviously have seen the Denver Nuggets.

MR. CHASE: I was going to say that, but I knew Your Honor would be way out in front of me on that.

Q (by Mr. Chase) This was not a slam dunk even though you were the only bidder, right?

A Well, I mean it's very hard to relate basketball to actual franchising situation. I'm afraid that's--it's taking a very simplistic approach, it's dangerous.

Q Do you play golf?

A Yes.

Q You ever hear the term "a give me putt"?

A You don't know what my answer is.

Q It's an easy putt, right?

A Well, it's always easy when it's given.

Q Okay. And that wasn't the situation with your bid even though you were the only bidder, right?

A I think, you know, it's very difficult to talk about these things on hindsight. I think that the exercise that the Wharf Company went through, which I think was well demonstrated from early years with almost four or five submissions and with the community relations that we have done, with the programming that we have, I felt very confident. And of course I want to make sure that our team was on the edge of the seat, because I want--I don't want to see a situation where they slack at that moment of time, so I continued to put enough encouragement and pressure on the team to say, look, you guys don't think that it's an easy sure in. But in terms of my own judgment, I was fairly sure we would win.

Q But you were putting the pressure on the team and you wanted to look as good as you could?

A No, I said to them to work as hard as you can.

Q Look at Exhibit--

A Because you've gone a long way. Don't slack now.

Q All right, Look at Exhibit 720, if you will, please. It's probably in the white book.

A Which book is that? I'm sorry. I'm having trouble with this--

Q I'm going to bring you a copy.

A Okay, what's the--

Q I'm going to bring you a copy, Mr. Woo. This is Exhibit 720. It's a little bit difficult to read. Let's see if we can work our way through it for a moment here.

This is a-- it's called the Wharf Holdings, Limited, and it's minutes of a meeting of the board committee appointed for dealing with the subscription television service license bid held at 17th Floor, Ocean Center, Harbor City, Kowloon, November 6, 1992. Do you see that?

A Yes.

Q Now, you had--Wharf Holdings had delegated to a committee of three people all matters with respect to the cable television bid; right?

A Yes.

Q And that is the three people shown on this document, you, Mr. Ng and Mr. Higgonson; right?

A That's right.

Q And these would be minutes of a meeting that you had. And the first minute on the second page of the document reflects bid applications.

A Yes.

Q "At the close of the bid submission period, it was confirmed that Wharf Cable's bid was the sole bid for the pay T. V. franchise. As a result, we can expect a more thorough and detailed examination of our proposal." Do you see that?

A That's correct.

Q And that's what you were anticipating as of October 1, 1992; correct?

A Whatever the date was.

Q Well, the date of these minutes is November. But the day after that bid went in, this is what you were anticipating; right?

A That's the best of my recollection. I can't give you exact dates.

Q All right. And at that time, you were fully aware, were you not, that UIH was and had been providing services to Wharf in connection with the bid application?

A They've offered to help.

Q Well, you knew that they were helping, didn't you?

A They offered to help, yes.

Q You knew that they were helping--

A They offered to help, and helped.

Q Pardon me?

A They offered to help, and helped.

Q All right. Good. We agree on something.

Why don't you look at Exhibit 547. This would be in the white books.

A It's a different one again?

Q Are you there?

A 547, yes.

Q It's a memo from Mr. Ng to you, and it indicates your handwriting pretty much all over the memo, and it indicates to you also that it attaches some notes from a meeting held prior to the time of this memo. Do you see that?

A Yes.

Q Down at the bottom there?

A Yes.

Q And the notes that are attached refer to a meeting held on September 27th, this is prior to the bid. And in this meeting, it's pointed out that UIH is already assisting in the identification of candidates for the position of Coo.

A I'm sorry, which one are you referring to?

Q I'm sorry. I'm looking at 4(c).

A Yes.

Q Summary of action agreed at meeting on September 27, 1992 where you have present Mr. Ng, Mr. Fung, Mr. Van Demark, Oswald, Fries and Pittman. Do you see that?

A Yes.

Q And these notes are sent to you on the 29th?

A Yes.

Q And these notes indicate UIH is already assisting in the identification of candidates for the positions of Coo--you understand that to be chief operating officer?

A Yes.

Q --chief cable engineer and Mis chief; right?

A Yes.

Q And it says, "Nominations from Nynex would also be welcome."

A Yes.

Q And it indicates that Stephen Ng will be reviewing of the--interviewing some of these people on his trip to the United States?

A Yes.

Q Now, you were aware at this time, and you were aware through the summer, were you not, that UIH was helping Wharf in recruiting permanent staff for the cable operation?

A Very generally.

Q But you were aware of it?

A I was aware of it.

Q Now, you also became aware after this date that UIH became extremely active in the implementation of the cable system; right?

A I'm aware the involvement. But how active they are, I'm not totally in the sort of a reporting updating stream.

Q Let's look at your agenda for meeting with chairman, October 27, 1992.

A Which exhibit?

Q It will be exhibit 661.

A 661?

Q Are you there?

A Yes.

Q Now, in the agenda, that's Mr. Ng's meeting with you; right?

A Yes.

Q And it indicates at Point 14, implementation, UIH programming; right?

A Yes.

Q And you were aware that UIH was very much involved in the implementation of the system?

A I was aware UIH was involved, but how much they were involved, I'm not totally aware.

Q Mr. Ng didn't keep you apprised as to what UIH was doing?

A No.

Q He didn't keep you apprised as to what was going on in the implementation?

A The instruction and the overall working mode was to get started, and he was under the--his responsibility, full responsibility for the implementation and start-up operation, and I allow him to basically oversee these particular activities.

Q You didn't pay close attention?

A I set overall guidance, but it was very clear the guidance that's necessary in terms of implementation was simply Stephen will have discretion to get on with the work that he thinks is appropriate.

Q You were aware, were you not, that Mr. Pittman, Mr. Moss and Mr. Williams from UIH took key positions in Wharf Cable, but still on the UIH payroll, to assist in the implementation?

A As I said, Stephen has total discretion in terms of his operation mode at that time. I may--if you ask me do I know specifically at that time the names that you mentioned, if you didn't mention it, if you asked me, I would not be able to mention their names to you. So that's really the degree of recollection I would have in this particular question that you have.

Q Well, let's look at a--

A I may hear him say something, but it does not register very strongly as far as I can recollect.

Q Look at Exhibit 626, please. It will be in the white book. It's probably in the jury book, too. 626.

A Yeah. Refresh me.

Q Go ahead, see if you can find it. I'll tell everyone what it is.

A It's October 17th?

Q October 17th, 1992 from Mr. Fung to Mr. Ng and Mr. Hung. Have you got that?

A Yes.

Q This would be an internal Wharf document?

A Yes.

Q And who is Mr. Hung?

A Mr. Hung is an executive director of the Wharf Company.

Q So is he higher in authority than Mr. Ng, or the same?

A Mr. Ng is more senior to Mr. Hung, but Mr. Hung is an executive director of the Wharf Company.

Q And he's senior to Mr. Fung?

A Yes.

Q Okay. And you're senior to all of them?

A I was the chief executive at that time.

Q All right. And you got this document, and it's got your handwriting on it. This is relating to an investor presentation on Wharf Cable; right?

A That's correct.

Q And you read the presentation and you made your notes as to what you thought would be important in the presentation?

A Well, I think that I may or may not read the whole thing. I just--the remark I made to Stephen is make sure they know what messages we want to get through and present in a way that readers can recall. If you ask me did I go through specifically this presentation, my answer to you is that I may have, and if I had gone through it in detail, I probably would have made some remarks on it. So that's the only thing I can say. I cannot recall every paper that comes to me, but that's really the best of my recollection.

Q Well, Mr. Ng directed it to your attention, and you initialed it; correct?

A That's correct.

Q And then you made a note on it and sent it back to Mr. Ng; right?

A That's correct.

Q And this document--this is intended for the Wharf investors; right?

A I think that perhaps--I don't know the exact background to it, maybe because Mr. John Hung deals with investors, our shareholders, because we have a big shareholder group, about 30,000 shareholders. So John probably at that time asked that maybe we should make a presentation to his contacts.

Q All right. And when you talk to your shareholders, you want to try to be as truthful with them as you can; right?

A Yes.

Q All right. Now, look over on Wc 025773.

A Wc?

Q Wc 025773.

A Right.

Q And it talks about the factors outlined above. And the factors outlined above are all factors that will make Wharf Cable a winning project, aren't they?

A Well, I think that it's self-explanatory.

Q All right. And then it goes on to say, "The factors outlined above combine to form an investment vision that enables the achievement of sustained long-term profitability and attractive financial returns. This view is shared by Wharf Cable's technical partners, Nynex Network Systems Company and United International Holdings, Inc. As telecommunications companies with substantial experience in developing and operating cable and telephony systems around the world, both Nynex and UIH have been integral to the development and verification of Wharf Cable's business plan.

As Wharf Cable proceeds towards implementation, its technical partners will continue to provide critical managerial expertise to ensure the achievement of the plan's operational and financial objectives." Do you see that?

A Yes.

Q Now, number one, you understood as of the time of this memo that UIH and Nynex had been integral to the development and verification of Wharf's business plan?

A Well, as I said to you, I was aware that Nynex and UIH had been working together with us, and that is consistent with my understanding with regard to the thinking that we had when we developed the technical cooperation agreement.

Q Mr. Woo, UIH and Nynex weren't doing a thing under the technical cooperation agreement.

A No, no, I didn't say that. I just said that as in line with our thinking, that's been incorporated in the TCA.

Q All right. Well, you'll admit to me then that they weren't doing this pursuant to the technical cooperation agreement?

A I don't know.

Q All right.

A All I'm saying at that time, you asked me what my understanding was. My understanding was that it was in line with my thinking in terms of the scope of work that is in that.

Q Well, let me ask you this. When you saw this and saw that they had been integral, did you go look at the TCA, or did you ask Mr. Ng whether any of this was being done pursuant to the TCA?

A No. I think that that is in line with my overall guidance to Mr. Ng, and I feel that if people offered to help, sure, I think that if that's their wish to help us and they've been working with us in the past and they're genuinely interested, because the idea was that we're waiting for the Nynex board to come back in terms of their decision of whether they can say yes in October or not. I mean, that is clearly the state of mind of everyone. So I'm not surprised in terms of these particular descriptions here.

Q So you thought UIH was just kind of helping out?

A Well, I think that they offered to help and they helped.

Q All right. Now, the next part of it says, "As Wharf Cable proceeds towards implementation, its technical partners will continue to provide critical managerial expertise to ensure the achievement of the plan's operational and financial objectives." Do you see that?

A Yes.

Q And so as of the time of this document, you were under the impression that UIH was not only helping out, but they were going to continue to help out?

A Well, that doesn't surprise me, because as a TCA, that starts at the issue of the license. That was my sort of understanding from reading the notes, you know, you asked me to read.

Q Well, wait a minute. Wait a minute. I think you testified earlier that you had no knowledge of that one way or another at the time of the TCA.

A No, but I just read it. You just gave me to read it.

Q Oh, I see.

A I just said the information you allowed me to read it.

Q I want to talk about the state of your knowledge in 1992.

A Okay. All right.

Q Okay? We all have learned a lot I think.

A Okay.

Q What we want to do is talk about 1992.

A Okay.

Q In 1992, you didn't have the vaguest idea what the TCA said.

A Well, I don't need to repeat that I only knew the various concept that I thought was important and I discussed with Mr. Stephen Ng.

Q All right, we won't do that again.

A Yeah.

Q But you did know that UIH had been integral to the development of the plan, and that UIH was going to continue to provide critical managerial expertise?

A Well, I think that that must be read in the contracts, that Wharf Cable is a company with many, many people. Wharf Cable's leading core of people is under Mr. Stephen Ng.

Programming was a key driving force that we need to get because the pressure from government is to say that you guys make sure that your programming is going to be (a) the contents are going to be good and that you're able to deliver. I mean, the term that we hear is that you've got to be able to deliver the pictures out of the tube. So that is a very, very important part of the company.

So I think that you say that is Nynex and UIH an integral part of the company? Yes, in the context of saying that we have a big trunk. The main trunk is the main Wharf team. The Wharf Cable is what Hong Kong government issued a license to. The Wharf Cable local management team is what Hong Kong government relies on to deliver the franchise.

Q Mr. Woo, do you want to answer my--

A And so I think that I'm explaining do I agree in the concept here. In that context, of course I agree.

Q Mr. Woo, I want you to answer my questions.

MR. JENTES: Your Honor, I think he just did and he came to the end and he said they were integral in the context that he explained. I think he's entitled to that.

THE COURT: Overruled.

Q (by Mr. Chase) Now, Mr. Woo, you have to answer my questions.

A Yes.

Q And my question was, simply stated, that as of the time of this document, you understood UIH had been integral to the development and verification of Wharf's business plan?

A Yes.

Q And you understood that Wharf anticipated that UIH would continue to provide critical managerial expertise to ensure the achievement of the plan's operational and financial objectives?

A Based on the statement, I have no problem.

Q And it was important to Wharf that the government believed that Wharf would achieve its fundamental business objectives?

A No this is to the investors.

Q It was also important to Wharf that the government believe that as well?

A No, I think that our communication with the government is done strictly with the government, and the government has certain priorities which they ask us to fulfill. I believe that Mr. Stephen Ng would handle these separately. So I cannot answer this question based on this document.

Q All right, fair enough. We'll talk about the government in a minute. At least it's important to you that the investors believed this to be true?

A No, it's a communication exercise. I think that the people wish to know what this is all about, but it is not a major investment by the company. It is a part of the investment and it was out of Mr. John Hung's insistence that he would like to explain. I mean, I don't think that there's anything to it but a communication exercise.

Q Well, when you say a communication exercise, that's a--

A He invites people to come to a big room and he makes a presentation and they ask questions, and that's how it was done. They do it regularly, every year, so that's part of Mr. John Hung's work.

Q So what you're doing here is you're having a communication exercise with your shareholders?

A With the investors.

Q With the investors.

A Basically the broker community, the investment community, and they would listen to these presentations and ask questions.

Q And when you have these communication exercises, you try to select what's the most material things to talk about with the broker, the investment and the shareholding community?

A Yes, the most important thing that we think that the--well, basically it's really allow them time to--allow them an opportunity to ask questions of really what they're interested to know. It's not really what we want them to know, but it's what they're interested to know.

Q Out of the world of facts, you select what you're going to tell them; right?

A Basically, the team has selected some presentation material.

Q And when they select material from the world of facts, you expect them to be honest and forthright with those facts that they present?

A Yes.

Q And that's what this is?

A Yes.

Q Now, the next paragraph, it says, "Complementing Wharf's technical and managerial rescues--and I think we probably could agree that probably meant to say resources, but we'll call it rescues--complementing Wharf's--"

A I'm sorry, I missed the--

Q Well, I'm going to try to read this literally, but I think there was probably a typographical error where it says

managerial rescues. I have a sense that somebody was trying to say--

A Is this a draft or is it a final version?

Q It's what you wrote on. Let me read to you and get your view, because I'm not going to ask about that sentence anyway. "Complementing Wharf Cable's technical and managerial--

A May I ask is this a draft or is it a final version or what?

Q Why don't you tell me?

A I don't know. You gave me this document, not--I don't have the document.

Q Well, whatever it is, it's the thing that you wrote a note to Mr. Ng on and sent back to him. Okay?

A I sent back on the covering memo. I did not mark on the version.

Q I understand that. Mr. Ng sent you the covering memo and he sent you the version and you sent both back to him; right?

A I don't know. I mean, I can't recall what exactly happened that day.

Q Mr. Woo, do you deny reading this document?

A I did--I should say to the best of my recollection, I answered it before, I don't know if you want me to answer it again.

Q Well, let me--

A I don't know whether this was spoken by Mr. Emil Fung. And is it a speech or is it a distribution? I have no idea. I don't know.

Q Well, let's keep--

A I really don't know.

Q That's all right. That's all right. Relax. I'll ask you some questions about it anyway.

A Okay.

Q In the second sentence in that paragraph, it says, "In this regard, Wharf and its partners have taken a comprehensive view of all critical, strategic and operational aspects of the cable project to assure ourselves of the project's financial viability under a multitude of adverse scenarios." Do you see that?

A Yes.

Q Was that true or false as of this time?

A Well, if it said it in the paragraph, it is true.

Q And then it says, "Our collective analyses point to the conclusion that the long-term business underpinnings of Wharf Cable are indeed solid, and the financial rewards of the project fully justify the project's sizeable capital investment." Right?

A Of course we would say that.

Q Well, was it true or false?

A Of course, it's true.

Q All right. And then you go ahead and you have Mr. Fung communicate with the government. And now we're going to talk about the government communications. This is what you're telling your investors.

A Which exhibit?

Q I'm going to ask you to look at Exhibit 597. Are you there?

A Yes.

Q And this is a memo of October 13, 1992 from Mr. Fung to Ms. Tong. Who is Ms. Tong?

A I think she was one of the executives that's working there.

Q Now, this indicates the topics to the--and the messages to the Broadcast Authority; right? Do you see that?

A Yes.

Q And you would expect your company to be talking truthfully with the Broadcast Authority and conveying to it accurate messages?

A Yes.

Q Now, down in the middle in the point that I've circled there, and you can see it on the screen, it says, "Wharf Cable will be assisted by technical partners Nynex Network

Systems and United International Holdings, Inc., who will provide Wharf Cable with state of the art knowledge and expertise in cable management and construction, as drawn from their broad collective experience in developing and operating cable systems worldwide. Their participation will ensure that targets set out in the operating plan are reasonable and achievable." Do you see that?

A Can I read the whole--

Q Absolutely.

A Can I read the whole page?

Q Read the whole thing.

(Witness reading exhibit.)

A Yes.

Q Now, was that a true statement at that time?

A That they would be assisted?

Q The statement made in the middle of this exhibit about the participation of UIH and Nynex and what Wharf anticipated they were bringing to the table.

A Well, again, this is an internal memo. I don't know whether that memo has been reviewed by Mr. Ng before it went out. So it's very hard for me to know whether Mr. Ng has agreed with this particular paragraph.

Q My question to you is to the best of your knowledge, information and belief, was that accurate as of the middle of October, 1992?

A Well, I mean, we're talking about drafting, and I don't really want to get into drafting.

Q Well, is there anything about what I just read to you that you think was not accurate at that time?

A Well, I think that broadly speaking, there were people who were assisting us. I think that United International, Limited and also Nynex people, they were assisting us.

Q This is a little stronger than they were assisting us.

A Well, I didn't want to talk about drafting. I'm aware, you asked me a question before was I aware. I said I was aware, and I continue to say that I was aware, and I cannot add any more to my comments than that.

Q You don't dispute anything in that paragraph?

A I have no particular problem with that, except I need to make sure Mr. Stephen Ng is happy with that before these things go out, especially for Broadcasting Authority meetings.

Q Well, do you recall any modification or change to this thing?

A I can't. I don't know.

Q All right, let me ask you this. Let me ask you to look over to Exhibit 668.

MR. JENTES: Your Honor, before we leave Tx-597, may I make a fairness reading?

THE COURT: Yes.

MR. JENTES: In the paragraph immediately following the one that was addressed to Mr. Woo, it says, "At an appropriate time following license award, Wharf may consider inviting the technical partners and other partners to participate in the ownership of Wharf Cable. Such participation will be aimed towards enhancing the strategic strength and capabilities of Wharf Cable to provide the Hk public with the latest in communication services. The level of potential minority equity participation will not exceed 40 per cent in aggregate. Wharf will remain at all times the controlling and deciding shareholder."

Q (by Mr. Chase) Mr. Woo, does that accurately reflect your understanding at that time, what Mr. Jentes just read there?

A Well, that is within the guidance I gave to Stephen Ng, and I believe that's within the statement that Wharf Cable gave to government when the bid was submitted September 30th.

Q Okay. And you still concur with that language at that time, Wharf may consider?

A Oh, I believe that the language, again, I think I said before it follows the statement that Wharf made to government when we issued the bid documents to government on September 30th.

Q Now, neither you nor anybody else associated with Wharf ever told the government that if UIH doesn't invest, Nynex won't have a right to invest, did you?

A I have--my personal contacts with government has always been on a basis that we have several options and propositions that we consider, but we never commit to tell

government in terms of what our final true decision is going to be, because we don't have all the information available. As far as the point that you made, the government's prime concern is that Wharf Cable and Wharf Holding is solely responsible for this matter. They are very, very concerned in terms of the obligations of delivering the franchise, because I don't know whether the Court knows it, they insist on a majority ownership of their cable franchise by a Hong Kong corporation.

Q So is the answer to my question no, that neither you nor anyone else from Wharf told the Hong Kong government that without UIH participating, Nynex wouldn't have a right to invest?

A Not that I recollect.

Q And you didn't tell the government that unless Nynex invested, UIH wouldn't have a right to invest?

A It was not a subject that government would delve into. They would hear as in terms of the final bid submission. They would look at the final bid submission as the official position of the company, and not any other discussions that we have.

Q And that would include discussions in this October time period when you're making these presentations to the Broadcast Authority?

A To the best of my own personal recollection, that's all I can say.

Q Look at Exhibit 668, please. Are you there?

A Yes.

Q Now, Exhibit 668 is Mr. Fung's October 29, 1992 speech to the Broadcasting Authority. Do you see that?

A That's what the document says.

Q And that would be--a speech to the Broadcast Authority would be something that would be authorized and approved by your company; correct?

A Yes.

Q Now, on the first page of this, it says, "Complementing Wharf's contribution will be the assistance provided by our two strategic technical partners, Nynex Network Systems and United International Holdings. Both partners possess many years of international development and operations expertise in cable T. V. and are ideally suited to assist Wharf Cable in realizing its financial and operating objectives." Do you see that?

A Yes.

Q True statement as of that time?

A Yes.

Q All right. Now, over on the next page, this is October 29, 1992, Mr. Fung goes on to say, "It is Wharf's intent to invite our strategic partners to join in the ownership of the project upon license award." Do you see that?

A Yes.

Q True statement at that time?

A Well, in the context of our overall policy, yes.

Q All right. So we're not talking about may consider anymore; we're talking about an intent at that time to invite our strategic partners?

A No, I believe that Mr. Fung had made a comment in terms of what his understanding is, but I think the company's position is stated very clearly in our bid document to the government.

Q So this does not accurately state your intent at that time?

A All I can say is that the corporate documents and corporate statements are stated in writing in bid documents to the government.

Q Well, now we're at a period of time that's about a month after the submission of the bid, and you're making presentations to the Broadcast Authority. And my question to you is very simple. As of that period of time, does this or does it not accurately reflect Wharf's intent with respect to making UIH and Nynex partners?

A I cannot comment in addition to what I said before. As far as this particular speech by Mr. Fung is concerned, it--certainly intention is always there. We are talking about the intention of inviting proposals, and upon receiving the proposals, then of course we talk about joint venture formations, and these are consistent.

Q So wait a minute. Let me understand what you just said.

In October, 1992, you had an intent of inviting proposals. Is that what you just said?

A I'm sorry?

Q You just said that your company's intent in October, 1992 was to invite proposals.

A Well, I think that is similar to what we said before, that as far as the company is concerned, we are talking about a situation whereby, number one, the bid is submitted, we're talking about at an appropriate time, the Wharf Company may consider to invite new investors into the company. That has always been consistent.

Q All right. And that, what you just said under oath, is in your view an accurate reflection of Wharf's intent in October, 1992?

A I have reflected the exact statement made in the bid document, and that is the only statement that we have made in an official capacity. Now, Mr. Fung has made statements to the various bodies, and I suppose that he has received Mr. Ng's approval to his speeches, and I was very, very careful in terms of saying that provided this is a speech, what he said at that time, we don't know. This is a draft of a speech. I don't know whether Mr. Stephen Ng approved this speech. I have to ask you to ask the other individuals first in terms of whether they received authorization. So you ask me what the intention was. I told you what the intention was at that time based on the September 30th statement.

Q Well, sorry to be a pain, but I want to make sure I understand this. First of all, we'll ask the appropriate individuals whether this speech was ever given.

A Yeah.

Q I'm not asking you that.

A Yeah.

Q What I was asking you was whether this is an accurate reflection of Wharf's intent? And I heard you to say our intent was to invite proposals and then at appropriate time, consider taking partners.

Q No. I think that--if I may say that my main thing is that very clearly, our official position has always been stated in the bid document to government. We cannot deviate from that, because if we deviate from that, we would have to inform the government.

Q Well, the bid document is September 30, 1992?

A That's right. That's the bid document.

Q And Mr. Fung is making this speech to the Broadcast Authority a month later; right?

A Yes.

Q Now, you're aware that at the time he makes that speech, there are UIH representatives in the audience, are you not?

A I was not aware of that presentation.

Q Well, would you dispute the fact that UIH--

A I was not present myself.

Q Pardon me?

A I was not present myself.

Q Would you have any basis to dispute the fact that UIH representatives were present when Mr. Fung gave this speech?

A I have no idea, because I was not there.

Q So you don't dispute it?

A I don't know. I can't give a comment.

Q And I'd like to get a yes or a no. Does this statement by Mr. Fung accurately reflect Wharf's intent on that subject at that time?

MR. JENTES: Your Honor, we've had that question asked about three or four times. His answer has always been the only intention is the one that's formally stated in the bid document.

THE COURT: Sustained.

Q (by Mr. Chase) All right, the bid document--look at Exhibit 549.

A Which is the number, please?

Q 549. White book.

A Same book?

Q Either book probably.

A Okay.

Q Let me ask you to look over on Page 549--I mean, Exhibit 549 at Page 5--actually, I'm sorry, Page 6. Do you see Page 6? Are you there?

A Yes.

Q And that's the section that talks about ownership structure; right?

A Yes.

Q And it says, "If Wharf Cable is successful in its license application, Wharf will consider the introduction at the appropriate time of Nynex, UIH and other strategic partners as co-investors." Do you see that?

A That's correct.

Q And do you believe that that is the same thing that Mr. Fung is saying in his speech to the Broadcast Authority?

A I can only reflect the official position of the company, as stated here.

Q I guess I'll ask one more time, at the risk of being objected to. Do you believe that what Mr. Fung is stating there is the same as what is stated in your bid?

MR. JENTES: Your Honor, I don't know how he can be clear as to what the position of the company is.

THE COURT: Objection is overruled.

THE WITNESS: Can you ask the question again, please?

Q (by Mr. Chase) Do you believe that the language stated in the bid that we just read to you is the same as what is stated in Mr. Fung's speech to the Broadcast Authority?

A The exact drafting of it is very different.

Q Well, actually the language is different.

A The language was different.

Q Do you believe the intent stated is the same?

A Well, the intent that was stated, I think you have to ask Mr. Emil Fung, because I did not make that statement, nor did I draft that statement.

Q Now, Mr. Woo, at the time of the bid, which you say is the official position of your company, Wharf was of the view that it would accept proposals from UIH and Nynex; right?

A Will consider.

Q Consider them.

A At appropriate time.

Q At appropriate time; right?

A Yes.

Q Subject to your absolute discretion?

A No, I think subject to the board's discretion and the circumstances at that time.

Q At whatever time?

A Whatever that time.

Q Whatever time the board deemed appropriate?

A Well, I think the board has a policy and an overall view for the future. So that would be an appropriate course to take, I mean, just like any board would do.

Q But it's not governed by anybody's standards other than the board itself?

A Well, because I think as far as the position at that time of the company on this bid is concerned, we would look at the right propositions at the right time from the right people.

Q And all that is in your discretion; right?

A Well, just like when the government accepts bids from everyone that chose to submit bids at that time, it is the government's absolute discretion at that time to accept a bid, to reject all the bids, or to ask further discussions, and the government could at that time say that, look, this is not the right time to put this franchise out, and they wish to delay it an appropriate time before they bring it out. And that is the experience that we have faced in Hong Kong, and I can tell you that that process was a very long process from the start when we made the first proposal to the government, until the time they decided to open the franchise for bids.

Q Mr. Woo, I don't care about the government right now.

A I'm talking about environment.

Q Forget about the government. I want to talk about the Wharf board. I know you can't forget about the government

totally, but for the moment, let's forget about it except the Judicial Branch.

The Wharf Board, the right time, the right people, the right proposal. As of the time you submitted your bid, it was your intent that all of that was subject to the absolute discretion of the Wharf board; right?

A At that time, it was very clear of everybody concerned that we were working for a three party joint venture, and that three party joint venture could not be consummated because we all had to wait for Nynex to come back with a board meeting on the 24th of October. So it was very, very much intended that the time frame that we are talking about was a time frame of the October 24th board meeting. And the management that I--report that I get was that they feel very strongly, and the Nynex people give a very, very strong indications that they would get it through in October 24th meeting.

So at that time, the mind frame--you asked me the mind frame, the mind frame at that time was that that was a time table, and as far as the Wharf board considering accepting joint venture partners, the mind frame was that there were two partners there. We have a framework of a three party joint venture. It is ready to go if all the pieces fall into place, and October 24th was definitely a target point. So it's not a never, never land when this particular statement was made.

Q So if I understand what you said, that as of the time of the bid, it was Wharf's clear intent that it was going to let UIH and Nynex in if Nynex said everything was okay?

A No, I think at that time, we're saying that, look, we've gone very far. The documents are drafted. And if Nynex comes back with a finalized, of course a shareholder's

agreement that is satisfactory to everyone, and then for all the boards to accept, including ours, including Nynex's, including UIH's. In the absence of any one of the boards not agreeing, that of course throws us back into a situation whereby we couldn't proceed further from that basic understanding that we have.

Q So at the end of the day, no matter what happens, the Wharf board has absolute discretion as to the right people, the right time and the right proposal?

A No, I think that Nynex, of course, finally decided not to join, so they in effect dumped us in terms of a three party joint venture. So we're at--I mean, to my own regret, and after so many years of working, you know, we needed Nynex and there was the very main driving force of all the months of work with Nynex, that they say no. They said no, we can't come to you with a positive response at this time. We would go further--

Q Mr. Woo--

A Let's wait--

Q Mr. Woo, stop. Stop.

A Yes.

Q I want you to listen to my questions.

A Okay.

Q Okay?

A I thought I--

Q As to whether Wharf would do a deal with UIH, Nynex or anybody else under the sun, was, at the end of the day, going to be within the discretion of Wharf, as far as you were concerned, as to the right people, the right time and the right proposal.

Q Well, my answer to you I gave already. I said that as far as a three party deal is concerned, it has to be agreed by all three parties. It cannot be any one party. I mean, of course each party can say they wish to go through it or not. That is Nynex's right, and Nynex made that point in hindsight, that they could not come forth with a positive response.

MR. CHASE: Your Honor--

THE WITNESS: So, therefore, because of that--

MR. CHASE: Mr. Woo, let me stop you.

THE WITNESS:--we cannot go ahead.

MR. CHASE: Your Honor, can I get an instruction that the witness answer my question?

THE COURT: Yes. Yes. Listen to the question carefully, and just answer it. Your counsel will be able to bring out these other points for you on redirect.

THE WITNESS: My apologies.

THE COURT: That's all right.

Q (by Mr. Chase) As far as Wharf entering into an investment with someone else, it was your intent as of September 30th that you would have the absolute discretion as to who it would be and when it would be and what

proposals it would be on, as to whether Wharf would commit itself; is that your testimony?

A Well, I wouldn't put it--I don't understand the words you have total discretion. I think that we work with an environment of a corporate board taking a decision based on a proposal.

Q All right, stop there.

A Yes.

Q We're going to do this in baby steps.

A Okay.

Q You've got a corporate board that makes a decision; right?

A That's correct.

Q And the corporate board, as far as you were concerned and intended at that time, acted within its discretion?

A No, a proposal would be put to them and they would say yes, we like it, or no, they don't like it.

Q And whether they said yes or no would be in their absolute discretion?

A Well, like any proposal that's put to any board, the board will make that decision in the interests of its own company and its own shareholders.

Q In its absolute discretion?

A Corporate boards have authority given by the shareholders to be responsible to the shareholders.

Q And then within their responsibility, they act within their discretion?

A In the interests of the shareholders.

Q And that was the intent of the Wharf board at the end of September, 1992?

A They have not seen a proposal that they can make a decision on.

Q All right. And that was the intent of the Wharf board, as far as you knew, in this October, 1992 time frame as well?

A There wasn't a proposal ready for the board to consider at that time.

Q And until there was a proposal for the board, as far as the board was concerned, no one had any rights with respect to anything in the cable T. V. project other than Wharf; right?

A I believe that the submission to the Hong Kong government make it very clear that Wharf Cable's responsibility rests solely with Wharf. In other words, if we do not deliver, we have guarantees linking to the government which Wharf would be totally responsible for.

Q Now, while you were aware that UIH was out there doing the various things they were doing in implementation, business plan and whatever, did you communicate to them that their rights would be subject to the total and absolute discretion of the Wharf board?

A My guidance to Stephen has been repeated in the past, and I don't want to repeat it again.

Q And you don't know what Mr. Ng told to UIH while it was out there providing these services that we've talked about here?

A I believe I answered that before in terms of the working mode I have with Mr. Ng.

Q So the answer is no?

A No.

Q Well, I guess we have an ambiguity.

A No.

Q You did not talk to Mr. Ng about what he said to UIH?

A I did not.

Q Okay. Let me ask you to look at Exhibit 1303, please.

A 13--

Q 03. Are you there?

A 1303.

Q Now, this is a November 5, 1993 letter from Mr. Stephen Ng to Mr. Mark Schneider. Do you see that?

A Yes.

Q And it relates to the launch of the system in early November, 1993; right?

A Yes.

Q And it thanks UIH for being present at the ceremony, et cetera; right?

A Right.

Q And it says down at the bottom, "It would not have been possible to beat our license commitment deadline by four months without your past support." Do you see that?

A Right.

Q Did you discuss with Mr. Ng what it is that UIH did that allowed them to beat their license commitment by four months?

A No.

Q Were you aware that Mr. Ng was sending this letter to Mr. Schneider?

A No.

Q Did you talk about this with Mr. Schneider or the UIH representatives when they visited you at the time of cable launch?

A I didn't talk about the letter.

Q Did you talk about what they had done?

A Yes, they said that they're delighted to help. And I said that it was very useful and we thank you and we enjoy working with you, and the conversation of course I already gave my testimony.

Q All right. And that's it, thanks for your help?

A Yes, and I said that this is cooperative effort by everyone concerned. It is not a one man show. I mean, Stephen had done a good job, but he needed to work with everyone, Yvonne Siu and the telecom side, input, the basic Wharf, basic staff, I mean, everybody put in, everybody, because for a start-up project, and I've been involved in it before, it's not a one man show.

Q All right. Now, you testified on your direct examination that you got some memos from Mr. Fung in the September time frame of 1993?

A Yes, I have.

Q Look at Exhibit 1260, please. This is a September 1, 1993 memo from Mr. Fung to you.

A Yes.

Q I'm sorry, it's Mr. Fung to Mr. Ng.

A Yes.

Q And it says, "Copy, Mr. P. K. C. Woo for discussion at our bi-weekly meeting next Wednesday."

A Yes.

Q September 15th; right?

A Yes.

Q All right. And attached to this Exhibit 1260 was a document of August 11, 1993, and that's Exhibit 1243, and both of these are in the plaintiff's jury book.

A 1243?

Q Right.

A So it's up front.

A That's an August 11th document that was transmitted to you with the September 1st memo. Both of these memos from Mr. Fung; right?

A Yes.

Q And you read those memos?

A Yes.

Q And you talked to Mr. Fung about them?

A I talked to Mr. Ng about it.

Q Do you deny that you talked to Mr. Fung about it?

A I may have in a meeting with both of them, but I cannot recollect any particular specific meeting. But, you know, I may have talked to both of them.

Q All right, I want to ask you a couple of questions. In the first memo, the August 11th memo, Exhibit 1243--

A Yes.

Q --the recommendation at the conclusion of this document, you read that?

A Yes, I have.

Q Where it says, "Wharf Cable cannot under weigh the entrepreneurial value of the sweat equity contributed by UIH in our nascent beginnings." Do you see that?

A Yes.

Q Why don't you tell us what sweat equity is. That's kind of a term of art, isn't it?

A Well, I think that any terms have a variety of meaning. I take it to mean that there is some early efforts that's been made by UIH in our beginning.

Q Mr. Woo, in your business world, you're familiar with the term sweat equity, aren't you?

A I have heard of it been mentioned before, but it's not a term that I use often myself.

Q Well, you're aware that the term is frequently used with the idea of putting effort, time and sweat into something to gain equity, to gain ownership?

A Well, I think this is Mr. Fung's memo. It's not my memo.

Q You read it.

A I read it.

Q You understood it?

A I think you have to ask Mr. Fung his meaning.

Q All right, I'll have to ask--

A Because I have a different meaning than him.

Q --Mr. Fung whether you understood it?

A Yes.

Q And you saw sweat equity there?

A I saw it, yes.

Q All right. "Wharf Cable cannot under weigh the entrepreneurial value of the sweat equity contributed by UIH in our nascent beginnings. We have a moral obligation to compensate UIH, if even just to avoid being branded corporately as being ungrateful." Do you see that?

A That's correct.

Q And then he goes on to say, "The nature of the compensation can take many forms, although it seems appropriate to enable UIH to benefit from a portion of the business upside." Do you see that?

A Yes.

Q Now, first of all, a moral obligation; that's a significant obligation in the Chinese culture, is it not?

MR. JENTES: Your Honor, I object to that question. I don't think it's relevant.

THE COURT: Sustained.

Q (by Mr. Chase) All right, let's talk about this.

You saw that Mr. Fung was considering there to be a moral obligation here; right?

A Yes.

Q Did you talk to Mr. Fung about what he meant about moral obligation?

A We may have.

Q Did you talk to Mr. Fung about why he believed the form of compensation should enable UIH to benefit from the upside of the project?

A Well, his statement made very clear in this paragraph.

Q You understood it?

A I understood what he meant.

Q And you understood down at the bottom where he says, "Recommend structuring a 10 per cent UIH investment," do you see that?

A I see that he's recommending something.

Q And you rejected it?

A I disagree with some of the points that he made. It is his comment.

Q You rejected the moral obligation?

A I have different views in terms of his recommendations.

Q And you rejected that UIH should be compensated with the upside of the project?

A I have disagreement with his statements made here.

Q And you reject the idea that UIH had sweat equity in the project?

A I have a different view on that.

Q And as of this point in time, you had never spoken to UIH, had you?

A No, I had not.

Q And Mr. Fung spoke with them on a regular basis for at least a year and a half by this point in time, hadn't he?

A If he has a job of doing that, I think I'm sure he's in the appropriate way in contact with different partners and prospects.

Q Look at the other memo, please. This is Exhibit--

MR. JENTES: So he's clear, refer to which one--

MR. CHASE: I'm about to.

THE WITNESS: Can I--I think we should--you know, I think the whole paragraph--

MR. CHASE: You can read all of it.

THE WITNESS: Okay, fine.

MR. CHASE: Tell me what you want. I'll do a fairness reading, an unfairness reading.

THE WITNESS: No, I'm fine. I just want to read it through.

MR. CHASE: Okay.

THE WITNESS: Thank you.

MR. CHASE: And I'm going to ask you about the next one, too, which is Exhibit 1260. So if you want to take a minute and read that, too?

THE WITNESS: Yeah.

(Witness reading exhibits.)

THE WITNESS: Yes.

Q (by Mr. Chase) All right, are you ready to go on to 1260?

A Yes.

Q Do you want to change any of your answers up to this point in time?

A Please ask.

Q Well, you've looked it over now. Do you want to change any answers?

A No, I don't know. I mean, when you say read it, I glanced through it. Do you want me to read it? I'll read it.

Q Well, I don't know. You do what you want to do. I want you to answer truthfully.

A Yes.

Q Have you answered truthfully?

A Absolutely.

Q All right, let's go on to 1260. Now, 1260 is the September 1st memo from Mr. Fung; right?

A Yes.

Q And this is the one that Mr. Ng delivered to you along with the one we just looked at?

A That's right. The first memo was from--let me just see--Mr. Fung to Mr. Ng, and this one is from Mr. Fung to Mr. Ng, yes.

Q All right. You've seen these memos and you read them at the time?

A Yes.

Q You've obviously read them in preparation for your testimony here today?

A I have seen these papers.

Q And you read them in preparation for your testimony here today?

A I don't think I read them in detail, but I certainly have seen them, yes.

Q All right. And then Mr. Fung, in this memo, talks about various considerations he's outlined above, and he says, "In addressing considerations one and three, while UIH cannot be considered as a heavy weight in the development of new technologies and services, their parallel development in other international cable systems and their contacts within the dominant U.S. cable industry serves to provide Wharf Cable with a useful strategic role, should we desire to utilize it. These links were particularly helpful in Wharf Cable's formative stages when we relied heavily on UIH to act as a catalyst and reference for our procurement of technical design resources, equipment and personnel."

Now, first let me ask you before I go on with this, as of September 1, 1993, was there anything about what Mr. Fung said in that paragraph that you would disagree with?

A Can I read it again?

Q Please.

(Witness reading exhibit.)

A I believe that is the statement made by Mr. Fung that is in support of his overall proposition in terms of a recommendation. I don't believe that I share the same view with him on his suggestions there.

Q I haven't got to the recommendation yet.

A No, you said the whole paragraph. So, therefore, you asked me whether I agree with the whole thing.

Q All right. Well, let me ask you--

A The whole paragraph. I certainly would not agree with the whole paragraph.

Q Well, I'm going to take it a bit at a time.

Do you agree with this statement? "These links were particularly helpful in Wharf Cable's formative stages when we relied heavily on UIH to act as a catalyst and reference for our procurement of technical design resources, equipment and personnel." Do you deny the truth of that statement?

A I would agree the concept that they were involved, they worked with us. But as far as the descriptive part of the degree, everyone has a qualitative word for what they mean. I think that it is very difficult for us to come to whatever particular level of qualitative standards. So I don't know when he says very, very heavily, what does it mean? For different people, it obviously means different things.

Q Well, now he was involved on a day to day basis--a day to day basis with this entire project, wasn't he?

A Well, I think that Mr. Emil Fung is a very good executive, and as far as the various aspects that was described, I'm not sure he's involved in every single aspect what he described. I'm not sure. He may be involved in certain aspects, but whether he's involved in every aspect that he's talked about, I'm not sure.

Q Do you know whether--

A I think Mr. Ng would know.

Q Do you know whether he was not in a position to observe whether UIH was particularly helpful in Wharf Cable's formative stages when we relied heavily on UIH to

act as a catalyst and reference for our procurement of technical design resources, equipment and personnel? Do you know whether Mr. Fung was in a position or not in a position to make those observations?

A I don't know.

Q You didn't have any day to day responsibility on this project, did you?

A Mr. Stephen Ng and I have direct contact, he's my direct report and he will contact me as when he feels it's appropriate and needed. And as we talked about before, the overall workload was very, very heavy. Mr. Ng is responsible to coordinate every aspect of the start-up operation. So he's given full authority in terms of the day to day operations, but he keeps me informed on issues of importance.

Q So the answer is no, you did not have day to day responsibilities in the project?

A Well, as the chief executive officer, I mean, I cannot go to my board and say that, look, I delegated to Stephen Ng, if things go wrong, blame Stephen Ng, no. I can delegate authority, but I cannot delegate responsibility. That's a corporate rule that I think any American corporation would know.

Q Let's go on to the next sentence. The next sentence says, "UIH's contribution was made in the spirit of entrepreneurial partnership and justifies a form of compensation commensurate with the expected upside of the Wharf Cable project." Do you see that?

A Yes, I have.

Q Now, what's your understanding of the meaning of the term entrepreneurial partnership?

A As far as the definition of that?

Q Your understanding of what entrepreneurial partnership means.

A Entrepreneurial is someone that's very active, that would advance to new frontiers, that would do many things in a fairly aggressive way.

Q That's an entrepreneur; right?

A Yeah, entrepreneur. You asked me what it means.

Q A capitalist.

A I try my best to explain it.

Q It's a capitalist, it's a businessman, it's somebody that wants to make money off of capital.

A No, entrepreneurial, you know, he's someone that's--it's an entrepreneur. I mean, he do many things. He provides service to people. There's an entrepreneur that provides a service, I mean like, you know, there are many service companies that are entrepreneurial. So I don't think that there's a very specific definition. I don't know what the dictionary says.

Q Well, let me ask you this. When you read Mr. Fung's recommendation that UIH did what it did in the spirit of entrepreneurial partnership and justifies a form of compensation commensurate with the expected upside of the

Wharf Cable project, what did you understand him to mean by that?

A Well, as far as I'm concerned, he's proposing that the UIH has a partnership with us, which of course I disagree.

Q Okay. So you understood that Mr. Fung was recommending that UIH did what it did in a spirit of being your partner?

A Yeah, spirit of wanting to be a partner. The spirit is--I don't know how you--you didn't ask me the definition of spirit, I hope.

Q Well, I'm not going to. But I'm going to ask you this. Did you have a different understanding of why UIH was doing what it was doing?

A Well, I think that UIH is doing what it's doing because they want to impress the Wharf Company that they are good partners to us if we choose to pick partners. Now, look, I mean we were trying to impress Nynex that we're going to be a good partner with them because we need them. We went all the way to New York. Like you say, I wined--you know, we wined and dined them. We wanted to impress them. I said before we wanted to give them all the information to impress them. Why? So that they would say yes to a partnership with us because, as I said, my strategic emphasis was to get a telecom partner. Now--

Q Mr. Woo, let me stop you for a second here. You never went out and built a telephone system for Nynex, did you?

A No, I'm talking about to impress.

Q Well, you can impress people in a lot of ways.

A Yes.

Q But I want to focus on what we're talking about in this case.

A Exactly. That's right. So there are different ways of impressing people, and you choose to take different ways to impress people. All right?

Q So your testimony is that UIH--

A Can I finish?

Q --gave you a cable television system to impress you?

MR. JENTES: Your Honor, I really think that this is argumentative. He asked the witness to explain what he understood by the document and what he understood why UIH was doing something, and he's attempting to explain it and Mr. Chase is interrupting him. I think he should be entitled to explain what he understood was this relationship and why UIH was doing anything, rather than having Mr. Chase interrupt him.

THE COURT: The objection is overruled.

Q (by Mr. Chase) Mr. Woo, I'm trying to get answers to my questions.

A Okay.

Q Now, Wharf never went out and built a telephone system for Nynex, did it?

A No.

Q And Wharf never went out and implemented a telephone system for Nynex, did it?

A No.

Q And Wharf never put people into Nynex's operation at Wharf's expense to help Nynex learn its business and establish contacts and hire people for its telephone business, did it?

A No.

Q But UIH did all of that for Wharf, didn't it?

A Did what?

Q All of the things that I just said. It did the implementation of your cable television system?

A They are part of our team.

Q All right. And it gave you people on UIH's payroll to teach you the business and to get you to hire the people to staff the business?

A Well, they assisted, like I said before, but our group had hired people before in the capacities that you mentioned.

Q And UIH let you use and helped you use UIH's contacts in the industry with respect to computer systems, decoders and other kinds of information systems and other kinds of technology?

A Those contacts are available to us in general.

Q You used UIH, didn't you?

A Well, they offered their service to us free because in the hope of impressing us that they can be helpful.

Q You said they offered you the service free.

A Well, they--

Q You have no idea first hand, other than what Mr. Ng tells you; right?

A That's correct.

Q All right. Now, when UIH did all this and you get down to September 1, 1993 and Mr. Fung is telling you that they did it with sweat equity and they did it with an entrepreneurial partnership and he's recommending that they be compensated with the expected upside of the Wharf Cable project, you reject all of that?

A No, I think that we share different views. I think Mr. Emil Fung make a view from his own perspective, from his own angle of involvement, which is not comprehensive, and of course in our company, we invite our executives to look at various situations and scenarios. And I think that Mr. Fung is a good executive, he explores all angles. He tries to say, look, this is one angle that I like you to look at. But I think that he also understands that there are many different angles. I think that Mr. Stephen Ng has different views and I have different views. He wished to share his views with us, which we used to discuss in terms of how we look at the relationship and how we take it forward.

Q All right. So you have Mr. Fung's view. And I take it from your answer here, you don't agree with it; right?

A I expressed that I have a disagreement, yes.

Q And Mr. Ng is involved in this conversation; right?

A To the best of my recollection, yes.

Q And what does Mr. Ng do? Does he agree with Fung or does he agree with you?

A I think that we explore all the pros and cons of that particular issue. I think that that's the usual discussion process. These things are very, very good for airing some of the views, and some of the views that's expressed in his memo were aired by the people there.

Q All right. Now, answer my question. Did Mr. Ng agree with you or Mr. Fung with respect to the recommendation?

A Mr. Ng basically said, look, I've asked Emil to take a look at this thing, and Emil's coming up with assessment from his own standpoint. Let's explore the views from this--get together and see how we take things further. I don't think that Mr. Ng at that time had expressed the views of Mr. Emil Fung. I think that Emil Fung was given audience to me to have a chance to express himself in terms of what he meant.

Q All right. Now, let's get back to my question. Did Mr. Ng agree with you or Mr. Fung?

A You have to ask Mr. Ng.

Q We will ask Mr. Ng. But I'm asking from your memory and your perspective as of the first part of September, 1993, did Mr. Ng agree with you or Mr. Fung on this recommendation of UIH for 10 per cent?

A I believe that the recommendation of 10 per cent was thought that it is not appropriate at that time, and that further studies and consideration should be taken.

Q So Mr. Ng agreed with you?

A I said what the result of the meeting was that we felt that the proposition should not go ahead, and further considerations of it should be looked at.

Q And this was not communicated to UIH, was it?

A We have a meeting where we air different views, and they left the meeting and they would take whatever action that is necessary with regard to whatever proposition that comes in.

Q To your knowledge, it was not communicated to UIH, was it?

A I don't have any knowledge.

MR. CHASE: Your Honor, I'd suggest we take the lunch recess.

THE COURT: All right.

(11:55 a.m.-Whereupon, the lunch recess was taken.)

AFTERNOON SESSION

(At 1:34 p.m. on March 19, 1997, with counsel for the parties present, the following proceedings were had:)

MR. WILSON: Your Honor, was it the Court's plan to do a long session this Friday, or are we sticking with our original schedule?

THE COURT: I think we're staying with the same schedule.

MR. WILSON: Okay, very well.

MR. CHASE: That's what I thought. I think the jury quit. They all went out to the Jefferson County Fairgrounds.

THE COURT: They're voting.

MR. CHASE: They're voting? You know, you should have told them when they came in at the beginning, that the good news is if they sat on this case, they weren't going to be sitting on the other one.

THE COURT: I did tell them something about that, but not on the Mcveigh case. I've got a seven month jury trial.

(1:35 p.m. - Jury present.)

THE COURT: Fire away.

MR. CHASE: Your Honor, before I start, I know I speak on behalf of us all in saying that we're all delighted to be inside with no windows on a day like today.

THE COURT: Well, again, you're going to have another pro bono appointment. So we'll keep you indoors as long as we can.

MR. CHASE: Thank you, Your Honor. I was worried about I was getting too healthy.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Woo, let's see if we can finish you up here this afternoon. I want to change subjects slightly on you here. We left you on September, and you were with Mr. Fung and Mr. Ng and we were talking about Mr. Fung's memos; right?

A Yes.

Q Now, you have testified in this case repeatedly that board approval of Wharf Holdings would be required to approve this investment by UIH; correct?

A Any proposal from an outside party was subject to board approval.

Q All right. Now, Gonzaga Li at that point in time was a chief executive of Wharf, was he not, Wharf Holdings?

A I'd have to check the records.

Q He was at least a director of Wharf Holdings?

A He was a director.

Q Now, we asked Mr. Gonzaga Li at his deposition as to whether board approval would be required, and let me show you what he said. The question was--and this is Page 20 of his deposition. Question, "So in this situation, if you were to

take a partner into the cable business who would be co-investing with Wharf, that is not something that would require board approval?" Answer, "The board may be informed at one of the regular meetings of what happened." Question, "But they would not have to approve that?" Answer, "They would not have to approve. They might accept the report or confirm the report made by the executive who made it."

Do you see that?

A Yes, I do.

Q Is that consistent with your understanding?

A No. I repeat as far as this venture is concerned, it is subject to board approval.

Q Let me call your attention to your own deposition. This would have been Volume II on May 23, 1995. And I'm going to read to you from Page 68.

MR. JENTES: Is that May 23?

MR. CHASE: Yes.

MR. JENTES: I'm sorry, the page is?

MR. CHASE: 68.

Q (by Mr. Chase) Are you there?

A Yes. Page 43?

Q 68.

A 68. Yes.

Q The question was, "But why is it necessary to have the approval of the board of directors of Wharf Holdings for the admission of strategic partners?" Answer, "Because that's what the board wants." Question, "Well, does the board of Wharf Holdings have to approve every commercial transaction that Wharf Holdings or any of its subsidiaries enters into?" Answer, "Depends on the nature of the transaction." Question, "So the answer is it doesn't have to approve all of them?" Answer, "No."

"What is it about the admission of a strategic partner into the cable venture that would require board approval of Wharf Holdings?" Answer, "This is an entry into a new business." Question, "By a strategic partner?" Answer, "No, by Wharf." Question, "All right. But my question is what is it about taking on a strategic partner that would require board approval?" Answer, "Well, for this one, it has delegated its authority to a committee." Question, "It delegated its authority to a committee. But prior to the delegation, why would Wharf board approval have been necessary for the admission of a strategic partner after the bid?" Answer, "I don't have the answer to that."

Do you see that?

A Yes.

Q Now, at the time you and Mr. Stephen Ng and Mr. Emil Fung were discussing Mr. Fung's memos, you had a committee that had been appointed way back in 1992 to approve or disapprove strategic partners; right?

A That's correct. We have to look at the board resolution that approved and set up the committee.

Q Do you want to look at the board resolution?

A Please.

Q Exhibit 510.

A Which book is that?

Q That would probably be in the white book, the first book. Or maybe not. I can get you a copy.

A What's the number?

Q Have you got it up there?

A I'll try to track it through the catalog.

Q It would be in Volume 2 of the white book.

A And what's the number?

Q 510.

(Witness reviewing exhibit.)

A This is September 21st.

Q 1992; correct?

A That's correct.

Q And that was your committee that was set up to approve the bid; right?

A That's correct.

Q Which you did?

A Yes.

Q And to admit strategic partners?

A Yes.

Q And it's a fact, is it not, that your committee never once met on the strategic partner issue, did it?

A Well, we'd have to check all the board papers to verify that.

Q You know, we have.

A Okay, that's fine.

Q And we're not aware of any board paper that indicates you ever did meet on that subject. Are you?

A I'd have to check the records.

Q Sitting here today, you know of no reason to believe you did?

A I can't recollect specific meetings during that period of time, whether we had them or we have not, because we have many, many meetings. But if the record shows that there are no meetings, I would abide by the record.

Q All right. And I suppose if there is a record of such meeting, you counsel would be able to produce it sometime before the end of this trial.

A I think so.

Q Okay. And when we talk about this period of time, we're talking about 1992, '93, and into '94. It would be true for that entire period; right?

A Right. I think that if you read the circular, it talks about they need to submit a recommendation to the board for approval in the event that the group's bid is successful. So it would still need to make a recommendation or report at that time.

Q So is it your testimony that you had no intention of admitting strategic partners prior to the time of the bid being approved?

A At that time, the intended three party arrangement did not come through and, therefore, it was not possible to make a recommendation to the board.

Q Wait a minute. That's not my question. My question was was it your intent not to admit strategic partners prior to the bid being approved? Was that your intent at the time of this circular?

A No, I think the intent of the circular at that time is in the overall environment, as I testified many times before, in terms of the last minute preparations for the submission and discussion with the various parties involved.

Q So the point is you had a three person committee that could admit strategic partners; right?

A That's right.

Q And that committee never met on the subject of strategic partners ever?

A I believe that the three party committee have met and discussed things, may not have a formal meeting, as you know and as I described before, during the hectic days of the last part of September. The records will show there's no formal meeting, but I don't believe that there's a record that show that there be meetings between the various people involved.

Q Certainly if there was a meeting you'd expect Mr. Higgonson would have remembered it, don't you?

A He may or he may not.

Q And certainly if there was a meeting to discuss this subject, you'd have records, wouldn't you?

A We may or we may not.

Q All right. Well, you know of no such records as you sit here, and you know of no such meeting as you sit here, do you?

A No, I don't recollect any specific situation as you described.

Q Let me change gears on you for a minute here. You've testified before that UIH, or any other partner, would have to have all of its money to invest on day one; is that right?

A That was an item that was discussed at one of the meetings I seem to recollect.

Q Well, wait a minute. Didn't you say that that was always one of your central criteria, that whoever invested had to have their money right then?

A I took your question to mean that was it discussed, and I said yes, it was discussed at one of the meetings that I recall, actually in one of the exhibits that you showed me that was very helpful indeed.

Q Well, was it or wasn't it one of your requirements expressed to Mr. Ng that whoever invested would have to have their money up front?

A I have discussed with Mr. Ng a basis in terms of financial requirements, and money up front is one of the propositions that was discussed.

Q Was it a requirement?

A Of course we would like to make it a requirement, but it's certainly something that we would like to see can be done.

Q I guess I don't know the answer of what you just said.

Was it or was it not, as of September 30th, that if somebody was going to become a partner, they'd have to have their money up front?

A Yes, this is one of the requirements that I have suggested.

Q And when you suggest it, that means it's a requirement; right?

A I suggest it; it means a guidance for Mr. Stephen Ng to review and consider and to see what appropriate actions he can take.

Q And this is a requirement that you were imposing at the time of the bid in September, 1992, although your company knew from January, 1992 about UIH's financial condition?

A Can I answer the question as I did before? I gave guidance to Mr. Stephen Ng on that particular issue that was brought up for discussion in terms of partnership issues. And that's how I recollect it.

Q Well, let's be a little bit more specific. You have testified that your company does not grant options; right?

A As far as the--what I understand to your meaning of options, yes.

Q Well, let's make sure we're on the same wave length.

What is your understanding of options when you say your company does not grant options?

A that means you give an opposing party, for whatever reason or benefit, where the other party can exercise an action for the future, depending on his own wish.

Q All right. So you give a party a right to do something, and then it's up to them as to whether they want to do it?

A If they want to do it, or they don't want to do it, it's up to them.

Q All right. Now, let's be clear here. You have owned stock options in Wharf, have you not?

A That's correct.

Q And Mr. Ng owns stock options in Wharf?

A That's correct.

Q And Wharf has a stock option plan, doesn't it?

A That's right, for our staff.

Q All right. So you do grant some kind of options, don't you?

A Not commercial options in terms of our commercial dealings.

Q All right. So now it's only related to your commercial dealings here?

A Well, we look at dealings with our staff as internal staff management and administration matter which we do just like any other company in Hong Kong and elsewhere. However, as far as commercial transactions, this is the policy that I personally hold.

Q Now, your personal policy, I take it you would have explained this very clearly to Mr. Ng; is that right?

A I believe that Mr. Ng has worked with me for very, very long time during the shipping industry, in the ship owning industry, in the commercial aspects in various businesses, and I believe that this is a philosophy that I have maintained, which he is familiar with.

Q And you would expect that Mr. Ng would make anybody working with him familiar with that policy as well?

A I don't know what he would do in terms of what he thinks is appropriate. I think his behavior in terms of his

working relationship with his own staff is something that he has the full discretion to conduct.

Q Are you saying that Mr. Ng has discretion to allow his staff to go out and talk about, negotiate and discuss options with third parties?

A My working relationship with Mr. Ng is direct report, and my working philosophy and guidance, he and I exchange views all the time. So, therefore, that's all I can say. But I would not be in a position to tell you and the Court in terms of how Mr. Ng deals with his own staff.

Q This is your company, not literally, but this is a company that you were chairman of the board of; right?

A This is a public company I'm a chairman of.

Q And a huge shareholder in this company?

A We have a shareholding, but there are other shareholders.

Q And you have this policy, you say, that your company doesn't allow options in commercial transactions?

A I have this personal philosophy, of which I have conducted my businesses for a long time.

Q And you say you've shared it with Mr. Ng, yes?

A He has worked with me, and I think that this philosophy is known to him. But I have not made special sharing experiences of any one instance. But I think that it would be fair to say that my philosophy on this matter is clear to Mr. Ng.

Q And your philosophy is you certainly wouldn't want anybody on behalf of Wharf going out in the public and doing something that violates your policy?

A No, I think that my staff would be under the instructions or guidance, just like Mr. Ng, that they were out to make constructive discussions or dialogues and they would explore requirements from prospects, requirements from proposing party as to how they see things. They may reflect that these matters may be what they wish to have, but certainly I cannot comment anything beyond that.

Q Would somebody on behalf of Wharf be authorized to go out and discuss with a UIH or a Nynex or some other party granting an option to buy into a Wharf controlled company?

A I think the authorization issue that you mention, there's no authorization yes or no because the staff were under the guidance of myself with my direct report and my direct report will conduct themselves in a most appropriate way. I have no instructions to Stephen Ng in a specific sense.

Q What's the answer to my question? Would a member of the Wharf staff be authorized to go out representing Wharf and enter into discussions or negotiations with a third party like UIH and Nynex about an option to invest in a Wharf controlled company?

A If a staff bring up a proposal to request an authority to propose, if it comes to my decision making step, I would not approve it.

Q All right. So, whatever they're doing out there, if it gets to you, you're going to reject it?

A Well, I would look at the overall situation. If there are some very, very special situations, then I have a discretion to look at it and assess whether the way to handle this matter should be the way that has been presented to me. I think that I have that discretion because I'm responsible to the shareholders.

Q So, you say you may grant options?

A No. I'm just saying that I would look at everything, but I feel that my past practices has been that I do not grant options.

Q So, if an Emil Fung or a Stephen Ng is out there in the world talking to UIH about granting them an option, it's not likely that's something you're ever going to approve?

A No. I think that they are supposed to have a basis for discussions. Whether these discussions/suggestions are from the proposer or from our company, I think that they would try to bring back the best deal possible in terms of what they feel the market is willing to do.

Q And, if they're discussing an option with a UIH or a NYNEX, that's not likely something you're going to approve?

A Well, I think, first of all, any discussions is on a non-commitment basis. I think that the staff, you know, looking in terms of the interests of the company may feel that considering an option could be in the company's interests. Now, he may say, look, this is what I think is the right thing. He may propose. He may propose. And, I think that each executive has his own series of operation. I think that I can't really add anything more than that.

Q Well, why don't you answer the question?

A I did.

Q The question is if they came back to you with an option to buy into a Wharf company, that's not likely something that you would approve?

A I would say that in most likelihood unless there are particular reasons, I would say no.

Q All right. Look, please, if you will, at Exhibit 369 in the white book, Volume 1. You there?

A Yes.

Q Now, I take it you've never seen this document before, is that right?

A I can't recollect seeing it.

Q All right. Now, this is a document that was produced to us in this litigation out of Wharf's files and I'll call your attention down to the control number in the lower right indicating a Wc control number meaning Wharf Cable. Do you see that?

A Yes.

Q Meaning it was produced out of Wharf's files. Okay?

A I don't know. I mean, I've never seen this before. I don't really recollect seeing this.

Q All right. Now, I'm not saying it was authored by Wharf. I'm saying it was produced out of their files and that's what the control number indicates. Do you see that?

A I don't get it. WCO429, is that what you mean?

Q 00424 which is the first page of the document.

A 00424, okay.

Q Okay.

A 42--yeah.

Q All right. Now, let me call your attention over to Page 00440 which is the page dealing with Hong Kong.

A Yes.

Q Do you see that page?

A Yes.

Q Now, this was also produced to us out of Wharf's files. Do you see that?

A That's what it indicated.

Q And, it indicates, "Hong Kong, UIH-Asia Investment Co. has the option to acquire a 10 per cent interest in Wharf Cable." Do you see that?

A I see that.

Q And, that's a document from your company's files; do you understand that?

A That's your statement. I have to take your statement for it.

Q Well, that's what your control number says at the lower right hand corner of the page.

A I don't know.

Q All right. Now, did you discuss with Mr. Ng or Mr. Fung the fact that UIH was preparing this kind of document and talking to bankers about having an option in Wharf Cable?

A Do I--

Q Did you have any discussion along those lines?

A I don't know at what time and I certainly don't know if that's a meeting or a telephone call that Stephen at one time brought to my attention. There's some public documentation that UIH was preparing that has indicated an option and that he would write to them to insure that error was corrected. I remember that.

Q Have you ever seen a document, a letter, a note, a memorandum of any kind from Mr. Ng to UIH or from anybody from your company to UIH calling attention to any errors in this document?

A I don't know. I think that, as I mentioned, it's not in reference to this particular document. It's in reference to a call to me. He said, look, he saw some sort of a public disclosure information. I don't know whether it's in relation to this, but that I can recall, but I cannot recall that conversation's particular relationship to this document. I don't know.

Q Did Mr. Ng tell you in the 1992 time period that UIH was distributing this book to potential bankers including Merrill Lynch and it was doing it with Mr. Ng's knowledge?

A I have no recollection of that.

Q Would Mr. Ng have been authorized to allow UIH, specifically Mr. Hudon of UIH, to distribute this to Merrill Lynch with that language in it?

A Well, I don't know if Mr. Ng is in a position to stop him or not. But, I think that Mr. Ng when he knows about it, whether he takes any action again is within the guidance I gave him in terms of how to behave.

Q Well, what would be your expectation if in August 1992 Mr. Ng knew--if you knew that Mr. Ng knew that UIH was circulating this to companies like Merrill Lynch saying that UIH-asia Investment Co. has the option to acquire a 10 per cent interest?

MR. JENTES: Objection; calls for speculation, Your Honor.

THE COURT: Overruled.

Q (by Mr. Chase) What would be your reaction to that if Mr. Ng knew that UIH was distributing this in August 1992 to Merrill Lynch and other kinds of companies like that?

A I can only speculate that he would follow up on it.

Q And, do what?

A Would contact UIH in terms of reflecting the incorrection. I mean, I don't know exact what he would do, but I would say in those lines, in those direction.

Q So, if Mr. Ng knew about this, you would expect he would have done something about it; right?

A I already answered that.

Q And, you would--

A Yes.

Q You would expect that this would be something that Wharf would not authorize UIH to be saying?

A That's correct.

Q And, did you ever discuss with Mr. Ng or Mr. Fung or anyone else how this document got into Wharf's files?

A No.

Q Did you know before today that this document was in Wharf's files?

A I think this is part of disclosure. I may have seen it in the--I don't know. I really don't recollect specifically.

Q Let me ask you to look over at Exhibit 504. Exhibit 504 is the draft franchise application by Ernst & Young >

A Yes.

Q Do you have that?

A Yes, I have.

Q Now, 504 has this language up in the second paragraph. "Wharf as the 100 per cent owner has offered options"--

A Just one minute. 504, okay. I got it.

Q 504, second paragraph. You there?

A Yes.

Q It says, "Wharf as the 100 per cent owner has offered options to NYNEX and UIH to purchase up to 30 per cent of the shares in CNCL." Do you see that?

A Yes.

Q And, this is from a draft of the bid application; are you aware of that?

A No.

Q Have you been told that?

A No.

Q Well, you're aware this language didn't appear in the bid, right?

A That's correct. It didn't appear in the bid.

Q Did you ever learn from Mr. Ng or Mr. Fung or anyone else how Ernst & Young came up with this language?

A No.

Q Would this language have been unauthorized at the time?

A Yes.

Q And, it would have been unauthorized for anybody at Wharf to have offered options to UIH or Nynex?

A Yes.

Q And, it clearly wouldn't have been Wharf's intent to honor those options?

A I'm sorry?

Q If they were offered, it would clearly not be Wharf's intent to honor those?

A They were not offered.

MR. JENTES: Object, Your Honor; both unclear and speculation. I don't know what he can answer on some speculative option that wasn't given.

THE COURT: Overruled.

Q (by Mr. Chase) You can answer?

A Well, first of all, it was not offered.

Q So you say?

A So we say.

Q Right.

A And, if it's offered and it is legally binding, we would have, of course, honored it.

Q Well, the question is at the time would Wharf have honored an option to UIH? That's the question.

MR. JENTES: Objection, Your Honor. He just answered that question.

THE COURT: Overruled.

THE WITNESS: The question again, please?

Q (by Mr. Chase) The question is at the time--at the time of the bid, would Wharf have honored an option to UIH to invest in the Wharf enterprise, the Wharf Cable enterprise?

A If it's a legal option and we are legally binding, yes, we will.

Q Well, did you do anything to determine whether you were legally bound to an option to UIH at that time?

A All documents that I've seen, all documents that are subject to board approval and my own scrutiny, has not a clause like that in any paper that I've seen.

Q So, you concluded in September 1992, and thereafter, that you owed nothing to UIH?

A It was not a question that's been discussed nor on the agenda.

Q And, you concluded that UIH would have no right to invest at that time or any time, thereafter?

A As I said before, a three-party agreement has been worked on, and in the absence of three parties signing on the bottom line, there are no agreements.

Q And, that was Wharf's intent at the end of September 1992?

A That's our understanding. That's my understanding.

Q And, that was Wharf's intent in October of '92?

A I'm sorry?

Q And, that was Wharf's intent in October of '92?

A I see no changes to that.

Q Okay. Look, if you will, please, at Exhibit 1213. Do you need some help with that?

A Yeah, please.

Q Okay.

A Okay, I got it.

Q Are you at 1213?

A Yes, I am.

Q Now, this is a July 15, 1993 memo from Mr. Fung to Mr. Ng talking about a draft memorandum of understanding. Do you see that?

A Yes.

Q All right. And, this document is in the jury book, I believe. Now, Mr. Woo, I'm just going to ask you about a portion of this. First of all, have you ever seen this document?

(Pause.)

A I really don't recollect my seeing it.

Q Have you ever seen the draft memo of understanding that's attached?

A I don't believe I've seen it to the best of my recollection.

Q Have you ever seen any draft--I'm sorry, I interrupted you.

A To the best of my recollection, I have not see these.

Q Have you ever seen any draft memorandum of understanding between UIH and Wharf or UIH, Wharf, and Nynex?

A No, not that I can recollect.

Q Well, let me ask you about a document you never saw and that's this document. I'm going to ask you about the language that says "UIH's option, Euroversion, lasts for 180 days following our joint approval of the business plan." Do you see that?

A Which paper are you referring to?

Q I'm talking about the first page and it's toward the bottom third of the page and there's three bullet points under acquisition of shares.

A Which page, I'm sorry?

Q The first page; not the Mou, but the transmittal.

A Oh, okay. The first page, right.

Q Right. And, it says, "UIH's option, Euroversion, lasts for 180 days following our joint approval of the business plan." Do you see that?

A Yes, I see the wording.

Q And then, it goes on toward the bottom and three lines up from the bottom, it says, "I offered that 10 per cent was more appropriate and was the basis of our original understanding." Do you see that?

A Yes.

Q Have you ever discussed this memorandum with Mr. Ng?

A Can I just read the memorandum?

Q Take your time.

(Pause.)

A No, I haven't. I see that this is the latest draft of an Mou proposed by UIH.

Q Well, it follows--if you'll look at the introductory paragraph, the latest draft of an Mou proposed by UIH. "This most recent proposal represents UIH's adopted position following several rounds of negotiation with myself." Do you see that?

A Yes.

Q And, myself being the author, obviously, Mr. Fung; right?

A That's right.

Q And, he's proposing this to Mr. Ng, right?

A He's proposing that to Mr. Ng based on a proposal from UIH.

Q All right. And, did Mr. Ng ever discuss this with you?

A No.

Q Did Mr. Fung ever discuss this with you?

A No.

Q Were you ever approached regarding an option regarding UIH?

A I can't recollect any specific discussions with Stephen Ng on that. We may have, but I cannot recollect specific incidences on that.

Q Do you know what it meant in here by, "I offered that 10 per cent was more appropriate and was the basis of our original understanding."

A Where?

Q Down towards the bottom; three lines up from the bottom.

A Are you talking about the percentage?

Q Yes.

A So, the paragraph says UIH says 15 and 10 per cent is what the--well, that is consistent with the original thinking of 10 per cent is probably the most we would give UIH if a deal was to be done.

Q All right. And, it talks about UIH's option, right?

A Where?

Q Middle bullet.

A Yeah, this was proposed by UIH.

Q And, it follows several rounds of negotiation with Mr. Fung?

A Several rounds of discussion and negotiation where the requirements of UIH was put to him.

Q And, well, you don't know that.

A I suppose.

Q You don't know that, do you?

A I'm guessing.

Q You're guessing, okay. Now, you would suspect that if Mr. Fung is involved in several rounds of negotiation with UIH that he's going to keep Mr. Ng posted as to what's going on?

A That's between Mr. Ng and Mr. Fung.

Q This memo indicates he's letting Stephen Ng know what's going on, isn't it?

A That's an update from Mr. Fung to Stephen, yes.

Q And, you have no idea what Mr. Ng's reaction was to this, do you?

A I haven't saw it. I didn't see it before.

Q And, you believe that Mr. Ng is familiar with your policy regarding options?

A Yes.

Q Let's look at some testimony from Mr. Fung for a minute.

MR. JENTES: Excuse me, before we leave the document, may I read a portion for fairness? TX-1213, Mr. Chase read "Please find attached the latest draft of the Mou proposed by UIH. The most recent proposal represents UIH's adopted position following several rounds of negotiations. On a very macro basis, the principles of the Mou appear to be sound. However, I have highlighted the points below where your concurrence would be appreciated."

MR. CHASE: Okay.

Q (by Mr. Chase) Does that change any of your answers?

A No.

Q Okay. Now, let me read to you a little bit of Mr. Fung's description of these discussions with UIH. See if this is consistent or inconsistent with your policy that you made known to Mr. Ng. I'm going to be reading from Page 165, starting Line 12, of Mr. Fung's deposition. Question, "Tell me about the discussion in this August time"--August. We're back now--so you're not mislead, this is August 1992. "Tell me about your discussions in this August time frame with Mr. Fries about an option?" Answer, "Just generally that--hey, you know, if we can't give you absolute assurance today, is this some structure that would accommodate us? You know, essentially buying time to get the money put in place and to also address all of these other issues that were outstanding with respect to structuring." "And, your response?" "And, my response was, yeah, let's work at it." "And, did you work at it?" Answer, "I believe we talked about various ways of structuring it, yes." Question, "Did you advise Mr. Ng that you were going down this path?" Answer, "Yes." Question, "Did he have any comments on the subject?" Answer, "Comments on the subject? Not"--

A Can you continue? Can you shift up?

Q Oh, sorry.

A Yeah.

Q Thank you. Answer, "Comments on the subject? Not until we had actually gone further down in terms of actually getting something down in writing." "Until that point in time, he knew you were pursuing the subject and he didn't tell you to stop?" Answer, "That's correct." "Did he ever express to you that working out some kind of an arrangement like an option was inconsistent with anything Wharf would do?" Answer, "No." "Did anybody ever say that to you at any point?" Answer, "No." "Did anybody ever say to you at

any point that Wharf simply doesn't give options to sell equity, to purchase equity?" Answer, "No." "Did you ever tell UIH that Wharf couldn't even consider working out some kind of an option arrangement?" Answer, "No." "In fact, it is something that you considered with Mr. Fries?" Answer, "That's correct."

Now, would Mr. Fung's discussions and negotiations with UIH about an option have been consistent or inconsistent with your policies at the time?

A The policy of a constructive dialogue exploring proposals from candidacies is very consistent.

Q So, it is consistent to be discussing with UIH getting an option to purchase the share of the Wharf Cable project?

A It is consistent to listen to what UIH has to propose. I think that this is something that we feel strongly that they have worked with us. At least, we must hear what they have to say and set it down on paper in terms of their wishes.

Q Is an option something that you would likely have granted at that period of time?

A I don't see the whole picture at that time. As I said before, this is my philosophy and I always keep that a final discretion in terms of the overall deal, in terms of the packaging, or whatever. But, the answer to your question is yes.

Q Now, you're aware, are you not, that in this case your company has made the allegation that no deal could be final with UIH unless UIH had all its money up front? Are you aware of that?

A I think that again this is a proposition and this is part of the proposition that must be finalized. The proposition is that if UIH was to propose a 10% investment in our company and if the money is ready for investment, that proposal would go to the board or the board would not make a decision until they see the overall package as a whole.

Q I guess I'm going to have to pursue this for a moment. At or prior to the time of the bid, would UIH have been allowed to invest in the Wharf project without being able to show it had the financial wherewithal to fund its share of the project for a reasonable period of time going forward?

A In my opinion, that would be a very difficult decision, but at that point in time, we have many other loose ends like NYNEX not able to come back with board proposal. So, I don't think that at that time that issue was addressed seriously like I described.

Q So, your testimony today is that UIH having an option was certainly a possibility?

A No. You talked about whether they needed to put money up front. That's two issues.

Q Well, let me just focus on--

A Your question talked about money up front.

Q Let's focus on the option. Was it or was it not a reasonable possibility that UIH could get an option and assume Nynex invested?

A No.

Q Okay. And, that's true as of the time of the bid?

A That's correct.

Q And, that's true as of October 1992?

A That's correct if the proposal is brought to my review.

Q Okay. Do you have any understanding as to why Mr. Fung would be having this kind of a discussion with UIH under that circumstance?

A Do you want my own speculation?

Q Do you have any understanding?

A I don't have any understanding.

Q I don't want you to speculate.

A I don't--I've not--I was not in direct discussions with him. So, I would not have that understanding.

Q Do you have any understanding from Mr. Ng as to why Mr. Fung was in discussions with UIH about an option given your attitude towards the subject?

A I would have no specific understandings bar from the overall guidance where he would listen to proposals that come in.

Q Mr. Woo, you have also testified and it's been the position of your company in this case that you couldn't do any deal unless it was in writing and signed by the parties, right?

A Well, that's the practice especially not only for most commercial transactions or all commercial transactions in

Hong Kong because we have a rule of law in Hong Kong, but particularly for this very large and very complex project as I described. And, given the collapse of the HKCC situation, we are extremely careful in terms of legal documentation to make sure that they are in order.

Q All right. Well, let's take this a little bit at a time. First of all, the HKCC situation had nothing to do with not being in writing because that was in writing; wasn't it?

A No, that means that the understandings need to be in writing.

Q Well, those were, weren't they?

A That's correct.

Q All right. Now, in this case, you're aware from documents that we've looked at and talked about that UIH was actively participating in the implementation effort for Wharf at least from August 1992, sometime into 1993. You're aware of that, aren't you?

A I was aware of participation, but the degree of active, I don't know.

Q And, you're also aware, I take it, that all during that time UIH was trying to get its deal documented with Wharf, are you not?

A They were trying to propose to us.

Q You're aware, are you not, that all during that time, in fact, preceding that time and going back to August 1992 and running all the way up through 1993, UIH was trying to get Wharf to put it in writing; wasn't it?

A UIH may be trying to continue to make proposals to the Wharf Company.

Q Now, you say UIH making proposals. Is it your testimony that Wharf was not making proposals to UIH?

A Wharf executives are discussing or conducting a constructive dialogue with party interested.

Q And, this is--they're having this constructive dialogue while UIH is implementing your cable television system; right?

A I do not agree that they are implementing our cable system. The Wharf Cable Company and its management under the leadership of Stephen Ng is implementing it.

Q Well, I don't think you and I have to argue at this point about degree. You'll agree with me, at least, that UIH is actively involved in that implementation?

A No. I said that UIH was involved; not actively. I think that evidence will show later in terms of your trial.

Q Well, I'll tell you what. I'll spare you the argument at the moment because we went through some documents earlier that I think speak for themselves. Let me ask you this. Go back to Exhibit 1213 that you and I talked about a moment ago. This is this draft memorandum of understanding.

A 1213?

Q Yes?

A Yes.

Q Okay. Now, that's mid-July 1993, right?

A Right.

Q And, this is a document that was negotiated by Mr. Fung on behalf of your company and turned over to Stephen Ng as his direct report.

A No. Mr. Fung had conducted a constructive dialogue with a view to bringing UIH proposal to the company.

Q How is that different from what I just said?

A This is the way we understand it to be.

Q So, what you're saying is that Mr. Fung had a constructive dialogue with UIH--

A Yes, on a no-commitment basis.

Q On a no-commitment basis--

A Right. Bringing forward UIH's proposal.

Q All right. And so, you take issue with Mr. Fung's characterization that this is a negotiation?

A Well, I think that this is his memo, not mine.

Q I know it's his memo. You take issue with his characterization that this was a negotiation?

A Well, this is his wording.

Q Well, first of all, you don't have any idea what he was doing with UIH, do you?

A That's why I say I can't really comment on what he wants to do and what he means by his words.

Q All right. And, all this is going on with UIH while they're working on your implementation, right?

A Yes.

Q Now--

A No, can I qualify it? I'm not sure that--can I just repeat that? I think we are going back and forth. I would accept that they are involved, but not more than that.

Q I understand you're not going to give me more than that, but they are definitely involved; right?

A They're involved.

Q And, he's having this constructive dialogue?

A Well, I don't know in terms of the way it was done. I have no idea in terms of the nature. I really can't give you comment in terms of how it was done.

Q Would you expect Mr. Ng as being Mr. Fung's direct boss to read what's put in front of him in terms of this draft memorandum of understanding?

A I would expect Mr. Ng to conduct himself in an appropriate manner.

Q And, what's that?

A What he consider--

Q What's appropriate manner when your company is out there having a "constructive dialogue" with somebody that's working on implementing your cable tv system? What's the appropriate manner for Mr. Fung's boss to act?

A Well, Mr. Ng would probably discuss with him if Mr. Fung bring this up to him.

Q Do you know whether Mr. Ng ever read this draft memorandum of understanding?

A I can't--I don't know.

Q You know for sure you never did.

A My best recollection, I never did.

Q And, you never presented it to the board of directors?

A I've never presented to a board of directors.

Q And, you didn't present it to the three-person committee?

A The three-person committee was to submit the bid, and the bid was submitted.

Q The three-person committee was also there to admit strategic partners, correct?

A The bid was submitted with our strategic partners.

Q The three-person committee was also there to consider strategic partners after the bid, wasn't it?

A Well, let's look at the circular.

Q Take out Exhibit 510 and look at it again.

A Okay. We have too many papers here, I'm afraid. I don't have it.

Q Well, let me read it to you and just ask if that's your interpretation that it only applied to before the bid. This is September 21, 1992; right? That's the date of this document, right? Do you see it at the bottom there?

A Yes.

Q And, as of September 21, 1992--

A Can I see the content again?

Q Help yourself.

A Well, my reading of it is that this is called a bid committee.

Q Mr. Woo, this committee met after the bid, didn't it?

A Yeah, but I think that the authorization of it is a bid committee for the bid only.

Q So, is it your testimony that after the bid, this three-person committee did not have authority to admit strategic partners? Is that your testimony?

A Well, I can only say that from my reading of this board resolution that it is a bid committee. I cannot say any more than what this resolution says.

Q Well, what I am asking you is your recollection. Was that three-person committee authorized after the bid to admit strategic partners?

A I think that we need to go back to the board to resolve in terms of what this power entails. But, my first reading of it is that there is a very specific point that says it's a bid committee, and when the bid is submitted, that's the end of the situation unless you're talking about--I don't know. I really can't say anything more than the resolution.

Q Mr. Woo, we already looked at November 1992 minutes from this committee when it talked about Peat Marwick--

A Then, it's there. Look, I'm not a computer that can remember every minute and every committee meeting in our company. As you noted, I'm just being very, very careful in identifying these papers and trying to understand the structure at that time.

Q You do recall looking at documents here today about a November 1992 meeting of that very committee which is after the bid, right?

A I remember seeing many, many documents today.

Q Let's go back to this draft memorandum of understanding. The fact is you didn't submit it to the board and you didn't submit it to any committee, whether or not the committee had authority at the time?

A As I said, I didn't recall whether Mr. Ng and I had specific discussions. I will leave it at that.

Q And, you don't know whether there was any dispute or disagreement between your staff and UIH's staff over the

terms of this proposed memorandum of understanding, do you?

A As I said, I don't recollect the period at that time. When I testified earlier, I believe that maybe it was in the afternoon or whatever. I just don't recollect in terms of actual discussions.

Q Why don't you look over at Exhibit 1305? This is a document you talked about on direct examination. It's a November 5, 1993 letter from--

A 13--

Q November 5.

A No, exhibit number, please?

Q Exhibit 1305.

A Yeah.

Q It's a November 5, 1993 letter from Mr. Mark Schneider to Mr. Ng transmitting a draft memorandum of understanding.

A 1313?

Q 1305, please.

A 1305.

Q Yes. Do you remember testifying about that on direct?

A I don't recollect. There's so many papers. I don't recollect. Can you ask me the question?

Q Yes. Have you ever seen this letter and the draft memorandum of understanding that's with it?

A I may have.

Q Do you remember seeing this draft memorandum of understanding?

A I don't recollect.

Q And, you don't recollect discussing this with Mr. Ng?

A We may have.

Q And, you don't recollect whether there was any disagreement or dispute with respect to any of the terms proposed in that document?

A Can I read this, please?

Q Please.

(Pause.)

A If you're referring to the subject of whether a proposal relating to a bipartite joint venture agreement has been discussed with me--

Q I'm not asking that.

A You're not, okay.

Q No.

A I don't know what you're asking.

Q I'm asking you about this specific draft memorandum of understanding.

A Well, the way I read this draft memorandum, it's a bipartite. So, that's not different from what I was talking about.

Q Why don't you finish your answer?

A I believe that during that time of my discussions with Mr. Ng is that we would continue to find a three-party arrangement, particularly after the November 3 meeting with Mr. Mark Schneider who was not surprised, at all, in terms of my discussion with him of a three-party deal. He did not raise the point that he had not heard of it or anything and he actually suggested--he said, well, in that case, let's all look for a telecom partner. So, that being the case, the three-party concept was still something that was fairly firmly in my discussion with Mr. Schneider. So, therefore, I think that with previous discussions and subsequent discussions, a two-party deal is not something that we would feel appropriate at that time.

Q So, is your answer that you did not read this draft?

A I told you I didn't recollect reading the draft.

Q All right. And, you did not discuss it with Mr. Ng?

A I discussed the concept of a two-party agreement not being something that we wished to look at at that time, but a three-party agreement.

Q You don't know if any of the terms in this draft memorandum of understanding were objectionable to Mr. Ng or Mr. Fung or yourself?

A Well, I think, as I said before, it was firmly in my mind in terms of a three-party agreement is something that we are pursuing. We intend to pursue. So, that being the case, a two-party arrangement, as this document apparently is describing, is not consistent with my discussion with Mr. Schneider.

Q Now, this document was transmitted to your company on November 5, 1993; right?

A Yes.

Q That's two days after you say you had this conversation with Mr. Schneider where you told him we weren't going to do any two-party deal?

A No. All I said was that we're going to make sure that we do a three-party deal. This is our concept all along, and we should continue to do a three-party deal. That's when he said let's look for a telecom partner. Do you mind if we go out and look for you? I said, fine, go ahead.

Q Excuse me. You have testified that on November 3 you talked to Mark Schneider and you made it clear to him that if you were going to do a deal, there would have to be three parties?

A My testimony says that my conversation with him is that I described the approach that we've taken and this is the three-party deal approach and the reasons behind it. And, I explained to him, yes.

Q Did you tell him you weren't going to do a two-party approach?

A I did not tell him that we weren't going to do a two-party approach, but I did tell him that the three-party approach is something that we continue to pursue.

Q So, you didn't rule out the two-party approach?

A Well, I believe that my discussions with him was concentrated or focused on a three-party deal.

Q And then, two days later--

A And, I explained to him--no, can I finish? I explained to him why a two-party deal would not be attractive. In other words, I said if it's a Wharf and a NYNEX joint venture or if it's a Wharf and UIH joint venture, I have various problems in terms of dealing with either the telecom side or the cable side. These were the issues that I brought up and so I think it is very clear to him on that basis why I think a two-party deal would not be plausible. But, I did not say that I don't want to do a two-party deal. I said a two-party deal gives me a lot of trouble. I don't want to do it. I want to do a three-party deal.

Q So, I don't know where we are here. Did--

A Well, you asked me a specific point.

Q Yeah, I know I did.

A You said did I say I don't want to do a two-party deal. All I said is I want to do a three-party deal and I explained to him the reason for a three-party deal. Any consequences of a two-party deal would give me a lot of problems which I did not want to pursue.

Q And, two days later, Mr. Schneider sends you--or Mr. Ng a letter with a draft memorandum of understanding of a two-party deal?

A Yes.

Q Now, I take it from what you've just told me that him doing that would not have been very consistent with the discussion you had with him two days ago?

A Well, I think that, as I said before, many people--you know, UIH has been very--my understanding from this paper is that they have been very active in trying to propose a two-party deal.

Q And, now, you say--you've sat down to talk to him, told him your views, and two days later you get this.

A Well, I think that certainly after the meeting the proposition that he made is that let's look for a telecom partner.

Q Did you get the sense when you got this from Mr. Schneider two days later that maybe there was some misunderstanding or you didn't make yourself very clear?

A No, I think that my understanding there is that Mr. Schneider was proposing a document and this is what Stephen had told me.

Q Did you talk to Mr. Ng about getting back to Mr. Schneider and telling him that this document would not even be considered because it's a two-party arrangement?

A Again, I think, my working relation--

Q Did you talk to Mr. Ng about him getting back to Mr. Schneider and telling him that this document would not even be considered because it's a two-party arrangement?

A I have discussed with Mr. Ng many times and the guidance that I've given him is continue in terms of my views.

Q That's your answer?

A Yes.

Q You never at any time took to your board a draft memorandum of understanding, a draft letter of intent, or a draft shareholder's agreement with UIH; did you?

A Not in a form that I can recommend to the board.

Q You never took it in any form, whatsoever; did you?

A Well, as the chairman and chief executive, it's my responsibility to recommend a deal before I bring it to the board.

Q And, you never even looked at a draft memorandum of understanding, draft letter of intent, or draft shareholder's agreement; did you?

A I don't look at drafting situations. I look at basic fundamental requirements which I discuss with Mr. Ng from time to time as are needed.

Q And, you never authorized Mr. Ng to put into final form any of these memoranda of understanding so you could take it to the board?

A Mr. Ng would be in normal circumstances discussing with me the concept of any proposition, and based on our discussions, we would decide a future course of action.

Q And, you never told Mr. Ng to tell UIH that none of these draft memoranda of understanding would be taken to your board?

A He and I discussed the conclusions of our thoughts at that time and then he would follow up with those conclusions.

Q You don't know if he ever did?

A Well, he would followup in whatever way he feels appropriate.

Q Would it be consistent or inconsistent with your authority for Mr. Ng to be telling UIH that the memoranda of understanding are being considered by his board?

A I'm sorry?

Q Would it be consistent or inconsistent with your instructions for Mr. Ng to be telling UIH that the memorandum of understanding was being considered by his board?

A Not knowing the background of the submission of this paper, I would not be able to give you a precise way that Mr. Ng should conduct himself.

Q Now, aside from the fact that you didn't want to do a two-party arrangement; you're not aware of a single term in any of these drafts that was a point of disagreement between Wharf and UIH; are you?

A Mr. Ng and I discuss broad concepts and principles and he's left with the duty and the responsibility to followup as appropriate.

Q So, the answer is you're not aware of any such disagreements?

A Drafting disagreement, I'm not aware of, no.

Q You're not aware of any disagreements between Wharf and UIH with respect to any of these terms other than the fact that you didn't want to do a two-party deal?

A Again, I believe I've answered the same question before.

Q That's your answer?

A Yes, I answered it before.

Q Okay. Let's talk about Nynex for a minute. At the end of December 1992, you became aware that Nynex was not going to invest in your project; right?

A I was informed by Mr. Ng. Yes.

Q All right. Now, that was a very significant event in the life of this project; right?

A Yes.

Q Your cable television license had not yet been granted; right?

A Yes.

Q And, the executive committee of the Broadcast Authority had not yet given its approval of the cable television license?

A Yes.

Q And, in late December, Nynex pulls out and your company turns to Henry Wise for advice about what to do about this. Do you remember that?

A Yes.

Q And, do you remember seeing Exhibit 887, a document prepared by Mr. Wise of Sara Clay & Partners relating to--

A Which document?

Q 887. Well, I'll tell you what. You might not have a copy in that notebook. Here you go.

A Thank you.

(Pause.)

Q Mr. Woo, I apologize for these lapses. It seems that somebody broke in here last night and stole some of our documents. I'm certain that that's what happened. Can't possibly have been--

MR. JENTES: It was NYNEX.

MR. CHASE: It can't possibly have been an administrative oversight.

THE WITNESS: Only the ones in my book.

MR. CHASE: Your Honor, I'm going to request that the U.S. Marshals pay more attention to this room.

THE COURT: Oh, busy down the hall.

MR. CHASE: I can't argue with that.

Q (by Mr. Chase) All right. Exhibit 887, Mr. Woo, this is the advice from Mr. Henry Wise, right?

A I read it.

Q And, did you read it at or about the time of December 1992?

A I don't recollect doing that unless there's some indications in the papers that I have read it. I really can't recollect.

Q You're read it recently?

A I read it recently, yes.

Q You know I was going to ask you about this?

A I don't know what you're going to ask, Mr. Chase.

Q Well, let's remove the mystery.

A Okay.

Q Turn over to Page 2, please?

A Yes.

Q I've got a portion of this highlighted. I'm going to ask you whether this is the advice that you recall receiving from Mr. Wise at the time of the NYNEX pullout.

A Yes.

Q "The bid should try to skate around the possibility that NYNEX might not in the end take up an equity stake. I believe that if it gained that impression, that would be something of a worry for government. It would become worried that the whole project would founder, regardless of whether or not this is fair. It could also precipitate government taking a closer interest in the affairs of Wharf than we might find comfortable." Do you see that?

A Yes.

Q Do you remember receiving that advice from Mr. Wise at or about that time?

A I believe that Mr. Wise is advising Mr. Stephen Ng.

Q Did Mr. Ng pass this advice on to you?

A I can't recollect any specific handling of this advice with regard to me.

Q This is the kind--I'm sorry.

A I don't know. I mean, Mr. Ng may have talked with me, but whether he has passed this to me, I don't know because I don't have all the records with me to know that I've initialed. If I initial on something, I'm sure that I've got it. But, if I haven't, I'm not sure. In this case, this was addressed to Mr. Ng.

Q All right. Do you disagree, so far, with anything Mr. Wise has said?

A I think that this is Mr. Wise's comment from a telecom side. And, I think that he's a person that Stephen asked from time to time in terms of how he feels about things. And, he's one advisor that we have. We have many advisors. So, as far as the views that he give, I would not totally agree with it nor would I disagree with some of the content that he said. The degree of intensity is always qualitative. What is the date of this memo?

Q December 29, 1992.

A Okay, December 29. Well, I think that, of course, that comments were made, and I think that it is a very fair comment from his standpoint. As far as my views of it, if I may just say that it relates back to the decision at the end of September in terms of going towards 100 per cent shareholding for Wharf to take up in terms of the Wharf Cable bid. And, of course, at that time, the TCAs were suggested both with NYNEX and with UIH. I discussed with Mr. Ng at that time, I said, look, if the other two parties, that is NYNEX and UIH, do not feel that this TCA, a continuation of a technical assistance that they're willing to give, I said, we will do without. So, my views are very, very strong to say that, if needed, we go alone. If we win, we win. If we lose, we lose. Now, that is my view always.

Q Now, Mr. Woo, my questions relate to the end of December 1992 and they relate to Mr. Wise's memo. Do you understand that?

A That's right. So, my point is that you asked me would I agree where his memo is concerned in terms of he's saying that NYNEX is very, very important. I have already given

you the view that I took at the end of September that if without NYNEX, if without UIH, we go alone, I would take the risk. If we don't win the bid, I can accept it.

Q Now, Point 7, he says, "Overall, I should prefer to see as little volunteered about this as possible. That is to say our stance should be that everything is on course. NYNEX and UIH are to be providing full technical support and specialist management expertise just as we say. We have now decided that the balance of advantage is for us to retain this method of working with which we are all comfortable until commencement of service. At that time, commercial opportunities will be seen in sharper focus, and we will jointly be able to decide the most appropriate way to apportion the equity." Do you see that?

A Yes.

Q And, that's what he's recommending your public statement should be, right?

A That is an advice given to Mr. Ng.

Q Okay. And, was this advice passed on to you?

A Mr. Ng may have discussed with me these matters, yes.

Q Then, he goes on to say, "Coming to the more immediate actions, my advice would be to keep any explanation to the minimum; if possible, zero. It would strike me as a regulator that if I received a sudden welter of explanations as to why Wharf will not have equity partners at time of bid submission, I should immediately become concerned that some traumatic event has arisen between potential partners. There is a caveat to that in the vent that

statements have been made of which I am unaware. (See under heading Change Stance.)" Do you see that?

A Where is that?

Q Well, do you see the paragraph I just read to you? I'm sorry, can I help you?

A Yeah. No, it's all right. I'm reading it.

Q Oh, okay.

A Okay. What's the question?

Q The question is was this advice passed on to you by Mr. Ng?

A He may have.

Q You disagree with any of Mr. Wise's advice there or did you at the time?

A Well, I've always believed that if the fact is to be disclosed and that's necessary, I think we would take the consequences.

Q Do you agree with the advice about, "Keeping explanations to a minimum; if possible, zero. It would strike me as a regulator that if I received a sudden welter of explanations as to why Wharf will not have equity partners at the time of bid submission, I should immediately become concerned." Do you see that?

A I believe the situation at that time was that NYNEX had informed the company that their board would not be able to come up with a decision at that time. Correct me if I'm

wrong. The advice was not that they were not, but they said we'll look at it afterwards. Now, I believe that that was the way to look at what NYNEX actually told us. So, if you look at that in terms of that information, if it will have to be reviewed, I think it has to. But, like any public company and the company as far as the disclosure of information is concerned, they would disclose as required and they would not volunteer any extra information if it's not necessary.

Q Now, you say disclose any extraneous information. You mean to the government?

A To the government, to the public, or whatnot.

Q And, if you were to tell the government that UIH was going to become an investor, wouldn't the government be kind of interested and concerned about what about NYNEX?

A Well, I think that that's a situation that doesn't arise because the three-party deal was what we've always intended. And, I believe, the government was aware that we were going for a three-party deal.

Q So, you couldn't tell the government at this point in time that you were about to do a deal with UIH because you were afraid it might have raised a concern about what happened to NYNEX?

A No. I think that we're not to do a deal with a two-party situation. So, that situation does not arise. And, I think that particular time it was clear that after NYNEX's advice to us the decision was then to go to, I think, post launch or something like that. I must look at the exact wordings at that time.

Q You say the decision. Whose decision?

A I'm sorry?

Q Whose decision?

A About what?

Q You say the decision was made to go to post-launch. Whose decision on what?

A There was a discussion with NYNEX in terms of how they wished to deal with it. I believe--and, again, I don't have any documents in front of me. I believe that to the best of my recollection NYNEX is saying, look, even December, we couldn't come up with a positive thing, a positive decision. And then, there was generally discussed via Stephen in terms of we should now talk about post-launch before we open the issue of inviting or considering considerations to invite investors at that time.

Q Now, you weren't party to any of this, were you?

A This is only through my discussions with Stephen Ng.

Q Look at the third page of this memo, .12. "If the above corrective measures need to be taken, it seems to me that a key element would be to retain the impression that Wharf and its strategic partners remain on the closest and most cooperative terms. It would therefore be important that this be dealt with through a joint delegation at the appropriate level." Do you see that?

A Which page?

Q Last page.

A Well, this was the Henry Wise advice on Page 3, Paragraph 12.

Q That's right. And, where Henry Wise is giving you the advice, "It seems to me that the key element would be to retain the impression that Wharf and its strategic partners remain on the closest and most cooperative terms." Do you see that?

A Yes, I see it.

Q Okay. Was that advice passed on to you by Mr. Ng?

A We may have discussed that.

Q Did you disagree with it?

A I don't recall whether I disagree or--not agree with it, but I think that Mr. Ng and I discussed in terms of the way forward.

Q Well, let's look at the way forward. Look at Exhibit 918, please?

A Okay.

Q Before you do that, Mr. Woo--you go ahead and find it, but I want to ask you a different question. Go ahead and locate it because we're going to get to it.

A Right.

Q All right. Let me ask you a different question and then I want to come back to it. I'm going to read to you some of Mr. Fung's testimony about the attitude of Wharf regarding the NYNEX pullout and ask if you agree with it. I'm

looking at Page 566 of Mr. Fung's testimony. Question, "Now, at the time you learned of the NYNEX pullout, was there a concern at Wharf that this would perhaps influence UIH to pull out from the project?" Answer, "I think that that had been asked as a potential question." Question, "Asked internally?" Answer, "Within Wharf, yes, internally." Question, "Well, it would have been a matter of concern if they pulled out at that time; would it not?" Answer, "I mean, we were concerned whether that would trigger any action on the part of UIH, yes."

Then, I want to go on to Page 571, Line 4. "And, UIH continued to provide those kinds of services after the date of his memo, correct?" And, the memo refers to the one you and I are about to talk about. Answer, "What services again?" Question, "Well, the services described by Mr. Wise and that is full technical support and specialist management expertise." Answer, "Yes." Question, "And, it was important to Wharf that the Hong Kong government perceived that UIH was providing those services; correct?" Answer, "Yes."

Do you see that testimony from Mr. Fung?

A Yes.

Q Now, let me take you to Exhibit 918. Exhibit 918 is Mr. Ng's memo to you of January 5, 1993 attaching lines to take; right?

A Yes.

Q This is lines to take with UIH and lines to take with the Hong Kong government and others regarding the NYNEX pullout; right?

A With the NYNEX decision not to invest at that time.

Q All right. Now--

A I don't see anything that says pullout.

Q All right. Whatever you say. Let's go to the first page of this document and it says "draft" at the top and it's dated December 24, 1992. Do you see that?

A Which one?

Q The first page of this--following the cover memo of Exhibit 918? The one--

A First page?

Q The one that doesn't have any handwriting on it.

A Right.

Q December 24, 1992?

A Right.

Q Now, let's look at the substance of this for a moment. Then, I'll ask you about some of your edits. Now, as of December 24, 1992, in this line to take with UIH, it states that, "NYNEX continues to like the project, but has decided not to invest." Do you see that?

A Yes.

Q And then, you change it on the next page to, "NYNEX continues to be enthusiastic about the project, but has decided not to invest." Do you see that?

A Yes.

Q Now, at that point in time, you had absolutely no basis for believing that NYNEX was enthusiastic about the project; did you?

A At that time, I had been looking at this proposed draft from Stephen Ng. It was a suggest drafting I passed back to him. It was for him to determine whether the drafting was suitable for the situation at that time.

Q At the time of your edit or at the time of the original draft, either one, you had no basis for concluding that NYNEX was enthusiastic about the project; did you?

A The final issue of any communication messages to the external audience is to be cleared through, of course, Mr. Stephen Ng as the person that would control these messages. And, as far as this point is concerned, as I said, I make suggestions. If my suggestions are not consistent with his understanding, Stephen Ng would follow up and insure that the drafting is correct as he sees it.

Q So, is the answer you had no knowledge one way or another, but it was up to Ng as to how he was going to describe this?

A No, I have the understanding from Mr. Ng that, yes, the NYNEX people, I think especially locally, were quite disappointed, but they were very enthusiastic about this matter still. I mean, the head office approval was not to proceed at that time. So, that was very encouraging to us and seems like I have a feeling that there is enthusiasm, but I leave it to Mr. Ng to insure that the wording is right before we release.

Q Well, let me put it to you this way. At this point in time, you and Mr. Ng knew perfectly well that NYNEX was not enthusiastic about this project?

A I believe that the direct contact is between Mr. Ng and the NYNEX people in Hong Kong and whatever link and contacts in New York. And so, my knowledge is secondhand. Mr. Ng's knowledge is firsthand. So, he would be on the spot to know in terms of whether the statements we make are true or not true.

Q I guess, we'll ask him. Let's go on to the next statement here and I'm looking at the part that doesn't have your handwriting on it. It says, "However, NYNEX has also decided to continue to fully support the application and the project, both generally and the telecommunications aspect, in particular." Now, at the time of the draft and at the time of your handwritten comments, you had no basis to believe that was true; did you?

A The drafting is prepared by Mr. Ng. I believe that given the wording and given his understanding and working with NYNEX, he is comfortable with that wording, I would accept that.

Q You had no basis to believe that that wording was true, did you?

A I have worked with Mr. Ng and I've trusted his judgment as something that can be relied on in terms of these releases.

Q Well, let's go on to the next sentence. In the next sentence, it says--I'm going down to the next paragraph.

A Okay.

Q "Wharf also values highly the strategic strength UIH brings to the project and would welcome UIH's continued participation through the Technical Cooperation Agreement." Do you see that?

A Yes.

Q Now, at the time of this memo, you were aware of no services UIH had provided under the Technical Cooperation Agreement?

A Well, I think that I would leave Mr. Ng to look at that because again, as I said to you before, in terms of my review of the draft, I rely on a lot of drafting basic work from Stephen Ng. And, as you notice from my own handwritten pages, I did not make any remarks in there. I presumed that Mr. Ng had covered that area and that it is satisfactory to him.

Q Is that true with respect to this entire memorandum; that you didn't know the truth or falsity of any of these statements and you left it entirely up to Mr. Stephen Ng?

A There were broad discussions covering the various points that Mr. Ng felt as important.

Q Well, let me ask about a couple, in particular. I'm not going to belabor this if that's your general answer. But, let me take you down to the line to take with staff, Hong Kong government, public, and Wharf shareholders. Do you see that one?

A Yes, I see that.

Q And, do you see where it says, "Wharf has reviewed the ownership issue with its strategic partners and agreed not to

introduce any new, i.e. non-wharf shareholders, at least until after service launch." Do you see that?

A Yes.

Q Now, this thing was written on December 24, 1992, right?

A Yes.

Q And then, you see a copy of it in January 1993 and you make your handwritten comments; right?

A If what the record says, it's true, yes.

Q Now, as of neither date had Wharf reviewed this issue with UIH, had it?

A I believe that this is under Mr. Ng's responsibility to see how he wished to conduct this matter.

Q Your answer being?

A I don't know whether Mr. Ng has or not, but it is something that Mr. Ng would do.

Q Did he tell you that he had reviewed the ownership issue with UIH at either of these dates, January 1993 or December 1992?

A I don't recollect any specific discussions on that.

Q Stay in the same paragraph for a moment, please. It says, "NYNEX and UIH will continue to give full support to the application and the implementation of the project under the Technical Cooperation Agreements." Do you see that?

A Yes.

Q Now, at the time of December '92 or January '93, you had absolutely no basis for making that statement, did you?

A It was a statement that Mr. Ng had suggested as a draft. I looked at it and he and I worked together on these bases before and I can't really answer you more than what I have given you before.

Q Did you discuss it with Mr. Ng where he got this information from?

A I believe that again I answered that question before.

Q Well, I guess, I'll have to ask for your answer again because I don't remember it. Did you discuss with Mr. Ng the basis on which he makes this statement that UIH will continue to provide services--or will continue to give full support to the application and the implementation under the Technical Cooperation Agreement? Where did he get that?

A I do not recollect specific discussions with Mr. Stephen Ng, but I believe that our discussions that we have will be on the basis that is this the situation that we should look at and draft so that we can communicate to the respective parties. That, we have discussed. This is a draft of Mr. Stephen Ng's. So, I think that we have an overall view of the situation.

Q Now, you made some handwritten modifications to this draft, didn't you?

A The second page, not the first page.

Q Right. I'm on the second page.

A Okay.

Q You changed "NYNEX continues to like" to "NYNEX continues to be enthusiastic about"; right?

A Yes.

Q That was your change?

A It's a suggested change to Stephen.

Q And, you did it with absolutely no basis, right?

A I did it on the basis with whatever conversation we have in terms of the NYNEX response and the local management's discussions with Mr. Stephen Ng reflecting their state of affairs. Based on that, I suggested that is that the wording or should we use "like" or what is "enthusiastic". It is something for Stephen to look at to see which one is more appropriate.

Q Mr. Woo, you knew and Stephen Ng knew that whatever the local NYNEX people in Hong Kong believed about this was quite beside the point as to whether NYNEX was going to invest.

A I believe that we worked with the local NYNEX people in good faith. We believed that they worked with us in good faith.

Q You knew that New York called the shots.

MR. JENTES: Excuse me, could the witness finish his answer?

MR. CHASE: Sorry.

Q (by Mr. Chase) Go ahead and finish your answer and then I'll ask you the next question.

A I forgot the question.

Q Well, I'll a question. You knew fully well, painfully well, by this point in time that the NYNEX operation in White Plains, New York, the board of directors there, the big honchos, they're the ones that called the shots, not the guys in Hong Kong. Right?

A Well, I think that the board approval requirement is known to us.

Q You knew that the reason NYNEX wasn't investing was because the people in White Plains, New York didn't want to invest?

A As I said to you, the final decision is their board. They didn't get board approval. That's what we understood it to be.

Q Certainly, not enthusiastic, were they?

A Well, I think that the NYNEX people in Hong Kong, given my understanding, has been very enthusiastic and continue to be enthusiastic.

Q The NYNEX people in Hong Kong?

A Yes.

Q The ones that don't make the decision about investing?

A But, we continued to talk with them. I mean, that's the link that we have in Hong Kong.

Q All right. Look down at the next paragraph where it says "Wharf also values", and you've eliminated from that paragraph "at this stage since UIH is the only potential strategic investor and Wharf has no plans to invite others." And, you've scratched that out, haven't you?

A Yes.

Q And, Mr. Ng proposed that language and you didn't like it?

A No. I think as far as--I scratched out this part because it does not reflect the situation, it does not reflect any proposition on that basis.

Q So, let me turn back to the unedited page so we can see it a little bit better.

A Sure.

Q The language that you thought did not reflect reality at the time is this language. "At this stage since UIH is the only potential strategic investor and Wharf has no plans to invite others, Wharf would propose that the ownership issue be left open until after service has been successfully launched." Do you see that?

A Yes.

Q And, you don't believe that that sentence was an accurate sentence at that point in time?

A Can you ask that question again?

Q Let me ask it differently. At that point in time, did you believe UIH was a potential strategic investor?

A My understanding at that time is that UIH is one of the potential strategic investor if our overall deal structure can be done. I don't know how to answer your question.

Q Well, I'm asking why you crossed out this language; "At this stage since UIH is the only potential strategic investor."

A Why did I cross it out?

Q Yeah, why?

A I thought it was unnecessary.

Q Well, was UIH at that time a potential strategic investor in your mind?

A Yeah, but I think that you asked me why I crossed it out and I said I crossed it out because it was in my opinion not necessary to be included.

Q Was UIH a potential strategic investor in your mind at that time?

A Yes, possible potential investor.

Q Possible potential investor?

A That's right.

Q All right. And, did Wharf not have plans at the time to invite others?

A I believe at the drafting of this memo the issue that's being raised is that Wharf would propose that the ownership issue be left open until after the service has been successfully launched.

Q I understand what that says. I'm asking you why you crossed out the language you crossed out?

A It was unnecessary.

Q Just an editing? Just a style?

A I just felt it was unnecessary for this release.

MR. CHASE: Okay. Your Honor, I'd suggest we take the afternoon break.

THE COURT: All right.

MR. CHASE: I just wondered how close people were listening.

THE COURT: To something like that, our ears are very attuned.

(3:08 p.m.-Jury excused.)

(3:09 p.m.-Recess accordingly.)

(At 3:30 p.m. on March 19, 1997, with counsel for the parties present and with the jury present, the following proceedings were had:)

THE COURT: Okay.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Woo, I just want to follow up on one point from our previous discussion. You were testifying that it was your understanding that NYNEX was enthusiastic about the

project based upon communications with the Hong Kong NYNEX people. Right?

A Our discussions was on the draft and you asked me whether the draft is incorrect. And, I will say that the draft is not incorrect. That's all I said, basically.

Q Okay. Let me ask you to look at your deposition, Volume II, Page 143. Are you there?

A Yes. Which line, please?

Q Start with Line 15.

A 140--

Q 143, Line 15.

A Yes.

Q And, it says, "Under the line to take with UIH, it says 'NYNEX'--the unedited portion appears to say, 'NYNEX continues to like the project, but has decided not to invest in the ownership of Wharf Cable at this stage.' That's the unedited portion, correct?" Answer, "Yes." Question, "Do you know that that was an accurate statement as of December 24, 1992 or January 5, 1993?" Answer, "I cannot recollect." Question, "Now the editing on this page appears to be your editing; is that right?" Answer, "Yes." And, that's your handwriting adding some language?" Answer, "Yes." "And, you added the language--you've taken out the language 'NYNEX continues to like' and you've put that 'NYNEX continues to be enthusiastic about the project'?" "Yes." "What was the basis for that?" Answer, "Well, because of their continued involvement." Question, "Was it somebody at NYNEX tell you in December 1992 or January 1993 that

they continued to be enthusiastic about the project?" Answer, "Not that I can recall." Question, "Did you hear that indirectly from anybody?" Answer, "Not that I can recall."

Those were the questions and answers of you in your deposition, right?

A Yes, sir.

Q Now, these lines to take, you say, is a Hong Kong term for the position you're going to take on a certain matter with the government and with others. Is that right?

A It's a jargon for communication by governments and large corporates in terms of their media communications.

Q All right. Look over, if you will, please, at Exhibit 1143.

A 1143, I don't have it.

Q All right. We will. This is 1143. This is an April 6, 1993 memo from Henry Wise to Wcil, attention: Stephen Ng. Do you see that?

A Yes.

Q And, Mr. Wise points out in that memo, "Separately at last week's lunch with Alex Arena, he raised the matter of the relationship between Wharf and NYNEX. I gave what until a few months ago was the 'party line' on this. That is to say NYNEX will probably take up some equity when the licensing regime is clearer and perhaps some of the political uncertainties are resolved." Do you see that?

A Yes.

Q Now, is party line also one of these things that you use to communicate with the government and others the position of your company?

A I'm not aware in terms of the reference of this particular point.

Q But, what about the use of the term "party line"? How is that used in--

A I don't know what Mr. Wise is referring to.

Q Let me just ask about the phrase "party line." When you talk about lines to take with outsiders, you also talk about taking the party line?

A Right.

Q So, that would be the same kind of thing?

A I don't know what Mr. Wise means, but party line as you explain to me and as I understand it to be is a party would have a position in terms of communications.

Q And, that's the line you're going to take with the outsiders; people like UIH and the government?

A Yes.

Q All right. Now, let me ask you to look over at Exhibit 1171, please? It's not there?

A No, it's another book. 11--

Q 1171. This is a circular to directors of May 27, 1993 from Mr. Stephen Ng; correct?

A Yes.

Q And, it says, "For directors 'information, I am pleased to report that the company's wholly-owned subsidiary, Wharf Cable, was formally awarded a subscription television license yesterday." Do you see that?

A Yes.

Q Now, immediately following this, we have Exhibit 1272--I'm sorry, we have Exhibit 1174.

A Yeah.

Q Can you put your hand on that?

A I just got it.

Q And, 1174 is Mr. Ng's memo to you telling you, "Partnership discussions with UIH in suspension. TCI also expressed interest in equity participation." Do you see that?

A Yes.

Q Do you recall Mr. Ng telling you that the partnership discussions are in suspension?

A I don't recollect any specific discussion.

Q And, do you remember that Mr. Ng sent you a succession of memos after this saying partnership discussions in suspension?

A I can recollect.

Q Do you recollect in the summertime of 1993, UIH contacting Wharf and telling Wharf that it had a successful public offering and had raised the money for the investment in the project?

A The only thing I recollect was Stephen mentioned to me that he received a phone call of the raising of funds by UIH in a very general broad term.

Q And, this would have been in the mid-summer of 1993?

A I can't recall.

Q Telling you that UIH had the money?

A Yes.

Q Okay.

A No, that they have gone through a public listing. Now, Mr. Ng did not tell me about whether they got the money or not, just that they went through and the--they raised some money and that's the gist of the conversation.

Q And this would have been shortly after this partnership discussions and suspension?

A I don't recollect the time scale.

Q Look over at Exhibit 1264, please.

A 12?

Q 1264.

A Bingo again. I have 1263 and a 1266.

Q There should be a 1264 there. I'll give you Exhibit 1264. This is a September 7th, 1993, handwritten memo, it's from Mr. Ng to Mr. Fung--

A Yes.

Q --September 7, 1993. It's a transmittal to him of a copy of the Wharf Cable financing memo indicating some markups by you. Do you see that?

A Yes.

Q And if you look at the first page of the transmittal under "Strategic Partners," you've eliminated the discussion in that paper of UIH; correct?

A I scratched out the paragraphs.

Q The one showing UIH to be a potential strategic partner?

A Yes.

Q And that reflected your thinking at the time?

A That reflected that for the purpose of this paper, it was not necessary for the presentation. I don't even know what the paper is about. Oh, this--oh, financing. Right.

Q All right. And now shortly after that, you had a meeting with Mr. Ng to discuss UIH being an investor in the project; right?

A I don't recollect specific meetings, but I need to have some--

Q Well, why don't--

A --meeting notes.

Q --you look over at 1272-A which--

A Okay.

Q --is a document that--it would be in the Defendants' book that was shown to you yesterday.

A Okay. Thank you. 12?

Q 1272-A.

A 1272-A. I have 1272.

Q If you're looking in the notebook you've got the same document. I think if you look in the notebook your counsel provided yesterday, 1272-A, it's more legible. It's the only thing that I'm looking for is legibility here because this is difficult to read.

A It's the black book?

Q Yes.

A And 12--12?

Q 1272-A.

A Yeah.

Q All right. Now, that reflects a meeting that you had on September 15, 1993, with Mr. Ng; correct?

A That's the agenda.

Q Well, you had that meeting with him on September 15--

A Yes.

Q --1993?

A We had a meeting.

Q And that's when you discussed Mr. Fung's memoranda; isn't it?

A I can't recall we discuss specific memorandums, but the meeting went according to the agenda.

Q Well, if you look over at--back to Exhibit 1260 and I'll just put this on the screen to remind you, this was Mr. Fung's September 1st memo and it says, "Copy Mr. Pkc Woo for discussion at our by-weekly meeting next Wednesday, September 15th." Does that assist your recollection?

A Yes.

Q Okay. Now, let's go back to this document here which would have been the agenda of your meeting with Mr. Ng on September 15th; right?

A Yes.

Q Now, these handwritten notes reflect Mr. Ng's comment--Mr. Ng's handwriting; right?

A Yes.

Q And this would reflect his discussion with you?

A His version of his discussion with me, yes.

Q All right. And this would be the--on the issue of whether UIH should be investor in the project; right?

A Yes.

Q And this seems to say, "UIH two schools, no JV until stabilization;" yes?

A Yes.

Q And then it goes on to say something else; can you read that for us?

A I cannot.

Q Okay.

A No something. Yes, yes something.

Q Nothing in that document about a third investor; is there?

A Not from the writing here.

Q It doesn't reflect any discussion about having a third partner; does it?

A Not that I can see.

Q Now look over, please, at Exhibit 1273.

A Yes.

Q Exhibit 1273, September 16, 1993, memo from Mr. Ng to Mr. Fung, "Didn't get very far with chairman. More interested in a telecom partner. How do we get out?" You see that?

A Yes.

Q Now, yesterday you testified about the meeting and what you believed prompted that; right?

A I'm sorry?

Q Yesterday you testified about your explanation for this particular memo; right?

A I have testified this exhibit was shown to me.

Q All right. Look over at your deposition, volume two, page 190.

A Yes.

Q Are you there?

A Yes.

Q Now, we asked you at your deposition about this very memo. If you look over at page 190, line 5.

A Yes.

Q This is the question and these were your answers.

"Question: It's a very short document. Do you know what he meant by didn't get far with chairman, more

interested in a telecom partner, both of which have exclamation points?

"Answer: You'd better ask him.

Then your lawyer asks you, "The question is, do you know what he meant by that?

"Answer: I don't know. I'm not going to speculate.

"Question: Reflecting back on the meeting you had with him the day before, was there anything that occurred in that meeting the day before that would allow you to interpret didn't get very far with the chairman, more interested in a telecom partner?

"Answer: I don't wish to interpret."

See that?

A Yes.

Q Those were your answers at your deposition on that particular document; right?

A Yes.

Q Now, look at Exhibit 1321, please.

MR. JENTES: Excuse me. Would you read the next question and answer?

MR. CHASE: The next question and answer would be:

"Question: You didn't have any discussion the day before that would reflect--that would have reflected that you wanted a telecom partner?

"Answer: I've always want--I have always want a telecom partner.

"Question: So isn't it logical to believe that that's what you expressed to him the day before in your September 15th meeting?

"Answer: I don't know what it means.

"Question: When it says didn't get very far with chairman, was Mr. Ng trying to convince you of something at that meeting?

"Answer: I don't know what that means."

MR. JENTES: I'm sorry. I only asked for one question and answer. You can keep reading for--

MR. CHASE: That's all right. I'm having fun.

(Laughter)

Q (by Mr. Chase) "Question: My question is on the day before when you were meeting with him, was he trying to convince you of something?

"Answer: Not that I recall."

Now, those are the questions and those were your answers at the deposition; right?

A That's correct.

Q Now turn to Exhibit 1321, please.

A 1321?

Q Yes, 1321. Are you there?

A Yes.

Q Now, you testified yesterday about the start to back-pedal, disagree, suggest a leak. You remember you testified about that?

A Yes.

Q Turn to your deposition, please, volume two, page 201. Now, I asked you about that document almost two years ago at your deposition. I asked you, "Under UIH, that would relate, by the way, to a meeting that you had with Mr. Ng on November 24, 1993?

"Answer: Yes.

"Question: Do you recall that meeting?

"Answer: No.

"Question: Under UIH it says start to back-pedal. That's Mr. Ng's choice of words?

"Answer: Yes.

"Question: Do you recall what he meant by this?

"Answer: No."

You see that?

A Yes, I do.

Q That was your testimony at that time?

A Yes.

MR. JENTES: Would you read the next question and answer?

Q (by Mr. Chase) I'll keep going.

"Do you recall what he meant by that?

"Answer: I disagree with back-pedal.

"Question: You disagree with that, the fact that it was in the memo or the fact that he was saying that's what you should do?

"I disagreed with the concept and the notion of back-pedaling."

You see that?

A Yes.

Q Now, you don't remember the meeting; right?

A I say I don't recall the details of the meeting.

Q It says in your deposition you don't recall the meeting.

A Well, I mean, it's a matter of terms.

Q How can you testify yesterday about what happened at a meeting you don't remember?

A I believe that given the various papers that I've seen, I think that sometimes the recollection is difficult.

Q So now you do remember it?

A Not all of it.

Q Well, let's see how much you remember. Why don't you look at page 205 of your deposition.

A 205.

Q Now, I'm asking you about the memo in this deposition at this point. Yeah. I'm looking at line 4 on 205. It says, "Two schools of thought on the Board. Which Board was this referring to?

"Answer: I don't recall.

"Question: Do you recall which Board members or whichever Board member had what views representing two schools of thought?

"Answer: I can't recall.

"Do you recall who had the view yes to consider?

"Answer: I can't recall.

"Do you recall who had the view, no, no, JV until after stabilization, HKT threat, et cetera?

"Answer: I had that view.

"Question: What does HKT threat mean?

"Answer: I don't know what it means.

"Question: HKT, you don't know what those--

"Answer: Probably it will be guessing again, Hong Kong Telecom, probably.

"Question: So what is meant by no Jv until after stabilization, Hkt threat? What is meant by that?

"Answer: Ask Stephen. It's his wording."

See that?

A Yes.

Q And those were your views at that time?

A Yes.

MR. JENTES: Your Honor. Nice reading. It's not impeaching, it's not inconsistent with anything that he said yesterday, he didn't even talk about that particular material regarding HKT. I didn't ask him any questions about that. It's not an impeaching reading with regard to anything he said yesterday.

MR. CHASE: Well, Your Honor, he testified that he--yesterday he testified he recalled a meeting with Mr. Ng where he discussed this memorandum. This material is contained right here in this memorandum.

MR. JENTES: But he didn't testify at all about the points you just read.

THE COURT: Objection sustained.

Q (by Mr. Chase) All right. Let me ask it differently, Mr. Woo. Is it true what your counsel says, you don't remember anything about these points at that particular meeting?

A Well, the comments that I gave is to the best of my recollection.

Q Well, let me--let me focus on one that you did testify about yesterday. Look at the point in that memorandum where it says, "Political point. JLG endorsed license on basis of Wharf ownership." Now, you did testify about that, didn't you?

A A point was asked to me and I try to give you the best of my knowledge at that time.

Q On that point; right?

A Relating to a political point, so to speak, yes.

Q All right. Now, look at page 207 of your deposition, line 11. So are you at line 11?

A Yes.

Q "Question: What is meant by that political point, JLG endorsed license on the basis of Wharf ownership?

"Answer: JLG endorsed license on basis of Wharf ownership.

"Question: What does that have to do with UIH?

"Answer: I don't know.

"Question: Did you have any discussion on that point?

"Answer: I don't recollect.

"Question: Was there ever any discussion with Mr. Ng about the position of the JLG being an impediment to offering UIH an equity interest in the cable project?

"Answer: I don't recollect.

"Question: Was there any discussion that you can recall with anybody about the JLG and its relationship to UIH investing in the cable project?

"Answer: I don't recollect."

Now, those were your answers at that time; right?

A Yes.

Q And it goes on through the rest of the memo and you had no recollection about anything in that memo; did you?

A Based no my disposition, yes.

Q Now, Mr. Woo, please look over at Exhibit 1327.

A 13?

Q 27.

A Yeah.

Q This is the December 9, 1993, memo from Mr. Ng to you regarding his December 1st, 1993, dinner with Mr. Schneider and Mr. Elsner in Las Angeles. Remember that?

A Yes.

Q Now, you testified yesterday about discussions with Mr. Ng relating to that dinner; right?

A Yes.

Q All right. Look over on page 213 of your deposition, volume two. I'm looking at 213, line 22.

A Yes. 213.

Q Okay. You there?

A What line?

Q Line 22 on page 213. You there?

A Yes.

Q "Do you recall this episode of Mr. Ng having a meal in Las Angeles with UIH representatives and then reporting back to you?

"Answer: I received this paper.

"Question: Do you recall discussing the matter with Mr. Ng?

"Answer: I don't recall."

Now, that was your testimony almost two years ago at your deposition about whether you discussed this with Mr. Ng; right?

A That's correct.

Q Go ahead.

MR. JENTES: Again, Your Honor, it's not impeaching. He didn't state anything differently yesterday from what he's just stated in his deposition. He said that he got a report and it's the report that's in the memorandum. He didn't discuss anything beyond that point.

MR. CHASE: Your Honor, yesterday Mr. Woo testified that he not only discussed it, but even went into the subject about take the bait.

THE COURT: The objection's overruled.

Q (by Mr. Chase) All right. Now, let me go on, Mr. Woo. Look over--let's go straight to take the bait since that's the one you were talking about yesterday. Look over on page 221. Yesterday you had some story, as I recall, about what you understood that to mean; right?

A You asked me have some story?

Q I'll withdraw the question.

Look at page 221, line 8, please.

A I'm sorry?

Q 221, line 8. You there?

A Yes.

Q The next point is, "Encourage them to activate TCA but they were careful not to take the bait. Do you see that?

"Answer: Yes.

"Question: What did you understand that to mean?

"Answer: Encourage them to activate TCA.

"Question: Okay. What did you understand by but they were careful not to take the bait?

"Answer: But they were careful not to take the bait.

"Question: What did you understand Mr. Ng to be referring to when he referred to take the bait?

"Answer: I suppose it means they did not accept the encouragement.

"Question: What was your understanding of why Mr. Ng was referring to that as bait?

"Answer: I have no recollection.

"Question: Did you discuss this with Mr. Ng?

"Answer: I have no recollection."

Then going on down to the next page.

"Did it disturb you that he was talking about activating the TCA as being bait?

"Answer: I don't recollect.

"Question: Did the tone of this memo disturb you in any way?

"Answer: If you mean disturb my response is reflected in my comments.

"Question: Do you recall being disturbed by the tone or content of this memo?

"Answer: I don't recollect that.

"Do you recall being disturbed that Mr. Ng on behalf of Wharf was trying to bait UIH?

"Answer: I don't recollect."

Then I ask, "Now, the next point five relates to "--different point.

Those were your answers to those questions about take the bait in that memo; right?

MR. JENTES: Objection, Your Honor.

THE WITNESS: Yes.

MR. JENTES: Object, Your Honor. It's not impeaching. Again, I didn't ask him any questions about his understanding of what Mr. Ng meant about the take the bait or anything. It's not part of--

THE COURT: Well, it doesn't have to be impeaching to his testimony yesterday. It's cross-examination on that issue.

MR. JENTES: No, no, I understand that, but the implication is somehow or another it's inconsistent and it's not inconsistent.

THE COURT: Well, that's a matter for the jury and argument, not for objection. Overruled.

Q (by Mr. Chase) Well, as a matter of fact, yesterday, Mr. Woo, did you not testify that you understood take the bait was to pay UIH under the TCA?

A What was my testimony yesterday?

Q That you were to pay UIH under the TCA or make some kind of ex-gratia payment, that's what you meant by bait.

A No, that's not what my--what I meant by bait. Bait was a term that Mr. Stephen Ng uses in his memo, it's not a bait. The bait term was never used by me, nor do I condone it. My point in terms of discussion with Mr. Ng at that time was clearly that at that point in time it is clear that we need to look at the situation and deal with it in a way that we feel is appropriate.

The first point that came up was that there expenses--development expenses that were incurred by UIH that we felt that given the fact that we cannot put together this three-party arrangement, I think we recognized that, and it seems like UIH is still talking about proposing to us a two-party arrangement, which we cannot agree. We say, look, better now hold and close the discussions because it doesn't seem that it's going to get very far, but in the meantime let's deal with it in terms of these development costs to be incurred.

Q Well, Mr. Woo, let me--let me read back to you what you testified to yesterday.

"Question:"--I'm looking down at page ten on page 37--line ten of 3763.

"Question: What was your understanding"--

A Which page was that?

Q You're going to have to follow it on the screen because I don't think you've got the transcript from yesterday. You're going to have to look on the screen.

3763. "Question: What was your understanding of his comment about they were careful not to take the bait?

"Answer: I'm sorry?

"Question: What was your understanding of what he meant when he said they were careful not to take the bait?

"Answer: Well, my understanding is that this is an arrangement--that this is an encouragement in terms of saying that this is something that we didn't have to do. It is an ex-gratia arrangement that we felt that we'd like to offer them and in offering of an ex-gratia payment which is not contractual is something that we felt is a good encouragement."

Now, that's what you testified to yesterday; right?

A Yes.

Q And at your deposition almost two years ago you testified to not even having any recall about this; right?

MR. JENTES: Your Honor, with all due deference, what he testified he was just read to was, "Question: What did you understand Mr. Ng to be referring to when he referred to take the bait?

"Answer: I suppose it means they did not accept the encouragement."

It seems to me it's not inconsistent at all.

THE COURT: It's argument. It's not to be interrupting the examination for that purpose. Overruled.

Q (by Mr. Chase) Now, Mr. Woo, let me--let me go on to another point in this same document. See what I did with it. Yesterday you testified about the front page of this document where it talks about, "Attached note records, my conversation with UIH last week. As you see, they are very persistent but we will continue to try. In the end we may need to consider a debt kind of instrument with an equity kicker of sorts, probably along the lines of what Emil suggested at one time."

Now, do you remember testifying about that yesterday?

A I--yes, I do.

Q Now, look over at your deposition, volume two, page 215, line 22. I'm going to read to you starting at--actually, I'm going to read to you a little earlier to put it into context for you.

A Okay.

Q Start with line 3. "Did Wharf believe that UIH had a right to invest in the cable venture at this time?

"Answer: In my opinion, no.

"Question: Why didn't you instruct Mr. Ng to simply tell UIH that?

"Answer: I don't recollect.

"Question: Now, the second sentence says, ' In the end, we may need to consider a debt kind of instrument with an equity kicker;' do you see that?

"Answer: Yes.

"Question: Why would you need to consider anything for UIH at this time?

"Answer: I can't see it either.

"Question: Pardon me?

"Answer: I can't see it either.

"Question: Did you discuss with Mr. Ng why do we have to consider anything?

"Answer: Yes, the Board would have reservations.

"Question: It says the Board would have reservation with respect to that, but why is there a necessity to consider anything with respect to UIH at this time?

"Answer: I don't know. This is Mr. Ng's memo.

"Question: I understand that and it went to you; correct?

"Answer: That's right.

"And you read it?

"Yes.

"You noted on it?

"Yes.

"And did you raise the issue with him of what do we owe these people, why do we need to consider anything?

"I don't recollect.

"Did it occur to you why do we owe them anything at this point?

"Answer: I don't recollect.

Now, do you remember those questions and those answers on that point at your deposition?

A It's in the depositions.

Q Now, the next thing I'd like you to look at, please, is Exhibit 1333. Are you there?

A There's a 1333-a.

Q There should be--well, 1333--there's a 1333. A may be a more legible copy. You need the white book.

A I have it now.

Q Now, in 1333 under "Partnership Strategy, UIH, Others," you circled UIH or somebody has circled UIH and written the word stall. Is that Mr. Ng's handwriting or your handwriting?

A It is not my handwriting.

Q Now, this reflects a meeting that you had with Mr. Ng on December 14, 1993; correct?

A Yes.

Q And under UIH you were instructing Mr. Ng to stall; right?

A No.

Q He was telling you he--

A Not that I can recall.

Q --was going to stall? Pardon me?

A Not that I can recollect.

Q Well, he was telling you to stall?

A I can't recollect that.

Q Well, which one of you raised the idea of stalling?

A I cannot recollect whether that's been raised and how it was raised.

Q Let me go back a minute here. In these various memos that we've looked at, how do we get out, start to back-pedal, these various memos that we've looked at and you've had a chance to look at them over these last couple of days, the memo about take the bait. You've seen all that. There's not a word in any one of these memos about needing three partners; is there?

A No.

Q There's not a suggestion in there that UIH's investment would have to be delayed or put off or stopped because not having a third partner; is there?

A No.

Q And there's not a suggestion in there about UIH not being able to invest because it didn't have the money; right?

A No.

Q That is right, isn't it?

A Yes.

Q And, in fact, at this point in time UIH had the money, didn't it?

A I don't know for sure.

Q Well, they were telling you they had the money, didn't they?

A I testified before that I had a conversation where Mr. Ng informed me of an IPO. That's how I got the information for.

Q And did he inform you that UIH had raised over $70 million in that IPO?

A I don't know how much.

Q Well--

A I can't recollect how much.

Q At this point in time when you're exchanging these memos about how do we get out and this kind of thing, you didn't have any doubt at that time that UIH had the money, did you?

A That was not a question we discussed.

Q All right. Now, let me take you to this memo again where it says, "Emil, didn't get very far with chairman." You see that one?

A Yes.

Q It says, "More interested in a telecom partner;" do you see that?

A Yes.

Q And that's what you communicated to Mr. Ng on the day before, that you were more interested in a telecom partner?

A I don't recollect how I communicate to him, but this is his handwriting, his note.

Q At this point in time, September 16, 1993, the cable TV license had been granted; right?

A Yes.

Q And at this point in time your system had been basically implemented; correct? Cable TV.

A We had not launched yet, I don't think.

Q You--

A What they--

Q --had not launched until--

A *What's the date of launch? I forgot.*

Q End of October '93.

A Okay. So it's not launched yet, but it's substantially ready.

Q You're substantially ready by September 16, 1993, on cable television; right?

A Yes.

Q And with respect to telecom, you still have a license pending, an application pending; right?

A Yes.

Q So you don't need UIH any more on cable television at this point in time; do you?

A I believe that our position has always been that a three-party arrangement is what we're looking for. And we're looking for a telecom company and in mine and also my colleagues ' mind is that if that happens, I think that UIH have been offering the kind of services and work with us and I believe that they would be the partner or the potential investor that we would consider.

Q At this point in time, you had what you needed on cable television and you had a license application pending on telecom and you were more interested in a telecom partner; right?

A That was not my discussion with Mr. Ng the way I recollect.

Q But you recollect telling him you're more interested in a telecom partner?

A I do not recollect what I said to him, but my discussions with him on these matters would usually say that, look, we must have a telecom partner and I would like to do a three-party deal.

Q Nothing in this memo says anything about a three-party deal; is there?

A He writes the memo; I didn't.

Q Mr. Woo, in March 1994 two UIH representatives went to Hong Kong to meet with various members of the Wharf Holdings Board; right?

A When was that?

Q March 1994.

A Yes.

Q And you testified that that was a meeting where you attended and Mr. Mark Schneider was there and Mr. Bill Elsner was there--

A Yes.

Q --from UIH and various other directors--

A Yes.

Q --of your company?

At the time of that meeting when they came out, you had absolutely no intent of allowing UIH to invest unless there was a telecom partner; right?

A That meeting was my meeting with Mr. Gene Schneider.

Q Yes, but Gene Schneider wasn't there.

A We didn't know until at the time the meeting.

Q Okay. But my question is not who you met with, my question is your intent at the time of the meeting.

A The intent of my meeting is with Mr. Gene Schneider.

Q Well, let me ask my question. At the time of your meeting with the UIH representatives, you had no intent of allowing UIH to become an investor unless you had a telecom investor; right?

A My views on this matter, yes, it's my view. It's my personal view.

Q And that personal view was formulated long before March 18th, 1994?

A The concept that I have mentioned has been very consistent throughout.

Q So as far as you were concerned, there was no possibility that UIH was going to become an investor as a result of anything that happened at that March 18th meeting?

A No, I meant my--what I said before has always been said. I was looking for a telecom company and my meeting with Mr. Mark Schneider that we should both be looking for a telecom company.

Q Mr. Woo, my question is on March 18, 1994, you didn't have a telecom company?

A We didn't because we're in discussions with Mr. Mark Schneider and UIH on the matters that's been referred to the, discussions that we've been looking at, the papers and all these different documents.

Q Well--

A We'd been occupied.

Q You say you were so occupied with Mr. Schneider you couldn't talk to telecom companies?

A I believe that given the comments that we received in the various letters that I've been shown, I don't think that it would be the right time for us to go to look at--at a telecom company on an active basis without resolving the matter that's on the agenda.

Q Let me understand your testimony. You're saying that you couldn't even be looking for a telecom company at this time because you hadn't resolved the matter with UIH?

A No, what I'm saying is that we wanted to start looking for a telecom company, that's my discussion with Mr. Mark Schneider. And, of course, subsequent to that there are various meetings which has preoccupied of Mr. Stephen Ng and his colleagues.

Q Well, when March 1994 rolled around, did you or did you not have a telecom partner?

A At that time we did not.

Q And as of March 1994, you had no intent of inviting UIH in unless you had a telecom partner?

A That was the idea.

Q And so when they showed up in Hong Kong in March 1994, there was no possibility that you were going to improve an investment right for UIH?

A As far as a two-part investment, no, but as far as a three-party investment, that was always the goal and the objective that we have.

Q Now, at the time in March 1994, NYNEX had been knocking loudly on your door about coming back in as a telecom partner?

A I think that we have to ask Mr. Ng in terms of what happened in terms of when you mention about knocking on the door loudly. I--I, you know, I have to defer this to Mr. Ng.

Q Well, as Mr. Duffy has testified in this action, that NYNEX was very interested in coming back in as a telecom partner; has that been reported to you?

A That's been discussed.

Q And were you aware of that in December 1993?

A I believe that at that point in time the interest expressed by NYNEX was known to Mr. Ng. I believe that Mr. Ng took the view there as that since the proposal or the suggestions would be going back to their New York office and so, therefore, I think from Mr. Ng's standpoint he awaits responses from Mr. Duffy or from somebody from NYNEX.

Q Did Mr. Ng make this known to you at the time?

A I can't recollect any specific situation or incident that we talked, but generally I think that he--we talk casually and when we see each other he could have mentioned to me that, oh, yes, NYNEX has indicated an interest. Now, that--I cannot recall specific conversations.

Q The fact is that you weren't interested in NYNEX any more, were you?

A I don't believe that's correct.

Q Well, you've never, ever come to terms with NYNEX, have you?

A I'm very interested in NYNEX.

Q Where are they?

A They dumped us.

Q Well, you never came to terms with any telecom partner, did you?

A Well, I think that after we started discussing with NYNEX the market expects that NYNEX is the party that we be discussing with. And NYNEX went very, very far with us

and as I said yesterday, it is my personal regret that NYNEX could not come to a deal with us.

Q So in March 19--

A So I am very interested when there's a indication that NYNEX is on.

Q Well, let me--let me see if I understand this. In December 1993, NYNEX wants back in; right?

A Based on the--whatever records that we have. I can't put the time in the--you know, I don't know what the time sequence is, but, yes.

Q And UIH comes out and you're not going to give them a right to invest unless you got a telecom partner; right?

A Well, that's the proposition I mentioned to Mr. Schneider in November 3rd.

Q And you got NYNEX knocking at the door wanting to be your telecom partner; right?

MR. JENTES: I object, Your Honor. We've asked that question about three or four times now and he's answered.

THE COURT: Sustained.

Q (by Mr. Chase) Well, let me ask it this way. Did you tell Mr. Schneider or anybody else from UIH where NYNEX was on this subject in 1993, late '93, early '94?

A Did I personally?

Q Yeah.

A Well, the only meeting I had with Mr. Schneider that I met him was in November 3rd and on that meeting I did not update the situation on NYNEX because I was not aware of the situation of NYNEX probably but I do not recall specifically mentioning NYNEX.

Q Well, any time between November 3rd and March 18, 1994, did you or anybody on behalf of Wharf tell UIH that NYNEX was knocking at your door?

A I have no recollection in terms of Stephen's activities in this particular regard

Q And as of that time, your company was talking to a lot of other potential telecom partners as well, weren't they?

A I don't recollect any specific situation.

Q Did you tell Mr. Schneider or did anybody from your company tell Mr. Schneider about other telecom partners that you were talking to?

A I don't have the information of that.

Q Well, Mr. Woo, let me ask you to look at Exhibit 1729. Yeah, this is actually a duplicate of another one. I'll have to give you a copy here.

A I don't think I have it.

Q I'm going to bring you a copy. This is the memo of Mr. Ng's breakfast meeting with Paul Duffy in December 1993.

A Yes.

Q Now, did Mr. Ng bring to your attention that NYNEX was inquiring whether there was room again for equity partnership?

A The memo was copied to me.

Q Yes?

A Whether we have specific discussions or not I can't recollect.

Q And as of March 1994, NYNEX wanted back in, did they not?

A Based on the memo here, there's indication yes.

Q And you still would not let UIH in, would you?

A No.

Q And you did not tell UIH about where NYNEX was at that time, did you?

A I think that my answer to that has to be very clear to you. You asked me whether I would not let UIH to come in, my proposition has always been if NYNEX comes in, UIH should be the first one that we should consider coming in from the cable side.

Q You didn't tell UIH in March 1994 where NYNEX was on this subject, did you?

A NYNEX came in and want to be a partner. And my statement, my conversation with Mr. Mark Schneider is very clear. You--he mentioned about going out for a telecom

company, we talk about going out for a telecom company. And that's a--this is our direction that we wish to pursue.

Q As of March 1994 you didn't tell Mr. Schneider where NYNEX was on this subject, did you?

A On that date Mr. Schneider asked to propose--to make a proposal that they want to be a shareholder and in my understanding of their proposal, they looking for a two-party joint venture and our response I think or believe that after the meeting was that the joint venture that they have in mind or the proposal that they have in mind is not satisfactory to us.

Q Now, you say they wanted a two-party arrangement. You didn't tell them that NYNEX was interested in coming back in, did you?

A Well, in March 1994 myself, I don't have overall clear recollection in terms of where NYNEX was.

Q You don't recall telling UIH anything about NYNEX at that meeting in March 1994 or before that meeting?

A As far as UIH is concern at the meeting their purpose was to make a presentation to our Board and the Board members who were there received them and heard their presentation. And they ask questions and they--the directors asked questions and the--Mr. Schneider and others make replies and when that was done, that was the meeting and then, of course, the directors then discuss afterwards.

Q Well, Mr. Woo, I'm not going to belabor this a heck of a lot longer. I just want to nail down this point. You say UIH was there to propose a two-party deal; right?

A This is our understanding all along, throughout the whole--I think that you have given me a lot of papers in terms of the continual proposition from UIH for two-party opportunity.

Q Is it your testimony that if UIH had been told or knew that NYNEX wanted back in that UIH would not have been interested in a three-party deal?

A No, I think at that time the Mr. Ng's notification from NYNEX in December as noted in this particular memo in terms of subsequent events, I cannot recollect the clear situation at that time in terms of NYNEX's interest.

Q So what's the answer to my question?

A I don't know. I mean, I just give you what I knew.

Q All right. Let me ask you about this particular meeting that you're having in--at this point in time. Look at Exhibit 1376, please. 1376 is a March 9, 1994, memo to a Mr. Dean Barrett.

A 1376.

Q Right. That would be in the white book.

A Let me just--yes.

Q All right. Now, attached to this document going to Mr. Barrett is a thing called briefing memorandum; do you see that?

A Yes.

Q And this is a one-page document supplied to the people who came to that meeting; do you remember that?

A Yes.

Q Did you read this document?

A Which document?

Q This one-page briefing memorandum.

A Yes.

Q And did you believe it to be accurate?

A Did I read it?

Q Did you read it and did you believe it to be accurate?

A Can I read it again?

Q Please.

A Yes.

Q You believe that to be an accurate description?

A Yes.

Q Was any other information given to your directors other than what's contained in this document?

A I don't recollect.

Q Now, did you tell your directors anything about what UIH had been doing since August 1992 with respect to the project?

A Did I--when did I do that?

Q At this particular meeting on March 18, 1994.

A The briefing in terms of the UIH association in the past would be done by Mr. Stephen Ng.

Q Well, did Mr. Ng tell the directors what UIH had been doing since August 1994?

A I cannot recollect the specific agenda--

Q '92. I'm sorry. '92.

A Yeah. I cannot recollect specific agenda of the--of the meeting, but if there was a need for updating, I'm sure that Mr. Ng would have done so.

Q Let me read you a brief description of this meeting by Mr. Fung and see if you agree with it. I'm reading from 791 of Mr. Fung's deposition. This is questions about what happened at this meeting, and I'm simply going to ask you at the end of this whether you agree with his description.

"Question: As best you can recall, tell me who said what.

"Answer: I believe Stephen led off that discussion and pointed out how UIH had assisted Wharf Cable and participated with Wharf Cable in our start-up and prior to our start-up. And the next recollection is I believe Peter Woo then raised the issue of the compatibility between UIH and

our management team. And as I told you earlier, that there was not, you know, he highlighted that there was not good relationships. And then Mr. Woo proceeded to discuss whether UIH would be of assistance to Wharf Communications or Wharf Cable in its future endeavors. And then other members of the Board chimed in and basically came or made comments to the effect that they couldn't see UIH being active, strategic or providing strategic contribution, active strategic contribution for Wharf in the future. And based on those discussions, I believe Peter Woo then decided that we would relay to UIH the message that we could not be partners."

Now, that's Mr. Fung's summary of what he recalls happening at that meeting. Do you agree with that summary?

A I do not agree with the--the way it was describe in that I believe that the meeting went in the way whereby the directors are commenting individually before I commented. And I summarized the situation at the end, after receiving comments from the directors. And as far as the various issues that's been discussed, I cannot remember specifically the points, whether they are correct or not correct. I believe that the points that were made could be made by myself, but I don't recollect the specific comments that's been relay--referred to me.

And the various discussions was on a basis that based on the documentations, like I said to you, that Mr. Ng has been--must assume has been preoccupied with the discussions with the UIH, as I described due to a difference of the opinion in terms of their proposals to us that I described very carefully.

As I said, at that time I was not aware in terms of the state of play or state of affair of NYNEX, so that was not mentioned, but I cannot add more than that.

Q Not a word in Mr. Fung's description about needing a third partner, was there?

A I believe that we are talking about UIH making a presentation. Mr. Schneider is telling the Board in terms of UIH, one, to make a present--an investment into Wharf and wish to be considered.

Q Not a word in Mr. Fung's description about needing a third partner; is there?

A Not from his testimony.

Q And then Mr. Fung goes on to say, and I'll ask you to look at page 798, line 18, "Well, did anybody raise the issue of what consideration UIH expected in return for the pre-license"--

A Can I get the--just--can you hold a second, please.

Q Sure.

A 798.

Q Yeah. And you're going to have to look at the screen because you don't have--you don't have this.

A Okay.

Q This is Mr. Fung's deposition. You there?

"Question: Well, did anybody raise the issue of what consideration UIH expected in return for the pre-license and post pre-license application and post license application services it provided?

"Answer: Yes, I believe that was raised.

"Question: Who raised that subject?

"Answer: I can't recall.

"Question: What was the answer?

"I believe the answer would--from Mr. Peter Woo was, we'll pay them off.

"Question: We'll pay them off?

"Answer: Yes."

Now, does that accurately reflect what you told the directors at the meeting, we'll pay them off?

A I don't believe that that, to my best recollection, was the exact words that was used or discuss. I believe that the concept that was described earlier in terms of the development costs, in terms of the development cost incurred during the earlier periods and the concept of the ex-gratia or the payment that we were talking about, that was the issue that was raised and I can't recall whether it was Mr. Stephen Ng who put this point across or myself. I--I cannot remember, but on that basis we said, look, that seems to be the right sort of consideration. I think that it was very, very clear that the--from the presentation the issues that was raised was something that the Board was concerned with.

Q You ever proposed giving UIH a dime unless UIH agreed to release and give up its claim to a right to ownership in the project; right?

A That is not correct because UIH never has a right and is not the issue of whether they have that right because we already said that any discussions that they have with us is on a non-committal basis, their proposals we receive from them. So that it never as far as the company concerned that there was a right.

Q That wasn't my question, Mr. Woo. My question is you never offered to pay UIH a dime unless UIH gave up its claim to a right in the cable TV project; right?

A That;s not the way we have looked at it, the way you describe. The way we have looked at it was that we have acted in good faith, we look at the situation, the circumstances did not allow a three-party--a three-party arrangement to be consummated, not because we didn't try, everybody tried, and as a result of that we are left with a situation that where it's going to be a possible two-part joint venture, which we say no.

Q Mr. Woo, I'd like an answer to my question. It's true, is it not, that Wharf never offered to pay UIH a dime unless UIH gave up its claim to a right to ownership in the cable TV project? Yes or no?

A Wharf is not obliged to make a payment to--to UIH.

Q So the answer to my question is you never have offered a dime unless UIH gave up its claim?

A The answer is that the way you put it is not the way that we have look at the matter. It was not the way it was arranged in terms of our thinking.

Q One more try. It's a fact, is it not, that you have never offered to pay UIH a dime unless UIH gave up its claim of a right to ownership in the cable TV project?

A I thought I answer that.

Q Please. Yes or no.

A It's not a yes nor a no because it's not the way that the arrangements was thought from our standpoint.

MR. CHASE: Well, Your Honor, I'd like the Court to instruct the witness to answer.

THE COURT: I think rephrase the question, please. Has there ever been any agreement to pay that did not include--

MR. CHASE: Okay.

Q (by Mr. Chase) I'll change it slightly. Has there ever been an offer to UIH--

THE COURT: Yes.

Q (by Mr. Chase)--to pay money that did not include a requirement that UIH surrender or give up its right or claim to a right in the cable TV project?

A There was never an offer that was made--excuse me. There was never an offer made on the basis that there's assumption of there's a claim.

Q Well, I got to try one more time.

A Maybe we have a language problem.

Q I don't think we have a language problem.

A I have to speak your language, huh?

Q Did Wharf ever offer to pay UIH anything where Wharf was not also asking UIH to give up its claim to a right to ownership in the cable TV project?

A Yes.

Q Can you show me anywhere where that offer was made?

A I'm sorry?

Q Where was that offer made? Who made it, when and to who did you make it?

A Can you come at the question again? I'm sorry, I'm really stumbling on this question.

Q Well, the question is did you ever make an offer to pay UIH that didn't involve UIH giving up its claim to ownership in the cable TV project? That's the question.

A The only offer we made was on a clean basis that that is a ex-gratia and that the matter is resolved. That's the only offer we've made. I just describe what I know.

Q Okay. Good. We're making progress.

A Okay.

Q By the matter resolved, you mean, therefore, UIH will drop its claim to a ownership interest?

A Yeah. Yeah.

Q Okay. That's part of your offer? Okay. Thank you. And by motioning to me, you're saying yes? For our record.

A I gave the answer.

Q And the answer is yes, right?

A I--

MR. JENTES: The answer--

THE COURT: The answer is yes.

Q (by Mr. Chase) Yes. The answer is yes.

THE COURT: All right.

Q (by Mr. Chase) Thank you. The record should reflect the answer is yes. Okay.

Mr. Woo, let me see if I can--if I can--well, first of all, let me make clear here, at this March 18th meeting there was no discussion of a memorandum of understanding?

A No.

Q There was no discussion of any particular terms that had been discussed between the parties, like liquidity?

A No.

Q Super majority rights?

A No.

Q Corporate governance? Nothing like that?

A All these matters in terms of the discussion of what? In the meeting?

Q In the meeting, in the March 18th--

A With whom? With Mr. Schneider?

Q There was no discussion among your directors in their own private meeting or there was no discussion with Mr. Schneider of these things; either one.

A Well, with Mr. Schneider there was--it was a presentation, it was a question and answer. I can't specifically remember what questions we asked. As far as the--the meeting we have internally, whether these issues were raised or not, I cannot recollect specifically.

Q Okay. Now, you concluded at that meeting despite the problems you were having communicating, I guess, with Mr. Schneider that if you ever got a telecom partner UIH would be first in line to be your strategic partner for cable; right?

A We had said that if we do a three-party deal, certainly UIH would be the first to be considered.

Q You told UIH that?

A I believe I talked to Mr. Schneider on November the 3rd.

Q I'm talking about March 18, 1994.

A March 18 we did not discuss because it was UIH's presentation.

Q At March 18, 1994, you came away with the view that if we ever do a three-party deal, UIH will be the first to be considered; right?

A When was that?

Q March 18, 1994.

A My view in terms of the three-party deal was advice to Mr. Schneider on November the 3rd and I've not make any particular note to that in terms of the meeting.

Q Well, let me ask you, with respect to the way you came away from that meeting, did you or did you not believe that if you ever had a three-party deal, UIH would be right up there?

A At that time, the--as I said to you, I have no recollection in terms of the state of affairs with NYNEX. It was not a--something that I have very close to my mind that NYNEX was in as a telecom partner. I mean, that's all I can say.

Q Well, I'll tell you what, Mr. Woo--

A So I didn't think that at that point in time if you ask me was there a three-party deal in the making, at that point in time when you mentioned about NYNEX, I--I didn't have that in my mind.

Q Let me go to a different subject for a moment here. Let's talk about 1997, which is this year, and China. Now, it's your view, is it not, that the change in sovereignty from

British rule to Chinese rule will have no effect on the license; right?

A Because it's already approved by JLG, yes.

Q Okay. And it will have no effect on the cable operations; right?

A Right.

Q And it'll have no effect on the continuation of the capitalist system in China?

THE COURT: In Hong Kong?

THE WITNESS: In Hong Kong.

Q (by Mr. Chase) I mean in Hong Kong. I'm sorry.

A In Hong Kong.

Q In Hong Kong.

A In Hong Kong the system that we have today will be maintained.

Q And the right of private property will be maintained?

A That's correct.

Q And the taxation system will be no taxes from China; right?

A That's right, we do not pay taxes to China.

Q And the Hong Kong dollar will continue to remain pegged to the United States dollar; right?

A I don't know where the statement was made, but that was a very strong policy and the strong policies from Hong Kong government and the JLG and the Chinese government supported that firmly. But I--I--there was nothing written in terms of the basic law.

Q You believe it to be true; right?

A I believe it to be true.

Q That nothing's going to happen with the Hong Kong currency to effect investment?

A I--to the best of my understanding, but I cannot guarantee anything to do with currency because I am not the government, so please--

Q We're not asking for--

A --excuse me on that.

Q We're not asking for guarantees. This is your belief; right?

A I think that based on my own personal experience and my own investment, I would take the belief that the link will continue.

Q And the banking and financial is to remain the same under the Hong Kong--under the Chinese sovereignty?

A That is to--to my best knowledge is the intention of both parties and all the parties concerned.

Q Now, you authored a document called The Challenge of Hong Kong Plus; right?

A That's correct.

Q And The Challenge of Hong Kong Plus is a document that talks about 1997 and how that's going to be a good thing for investment in Hong Kong; right?

A That's right, as a promoting--I'm a promoter of Hong Kong and that's why I have got that magazine and all that article about 19--five years ago.

Q Okay. And you believed it to be true then?

A I believe that is a view that's taken; it may not be shared by everyone and, of course, the--the view that I've taken is a--it's a personal view.

Q Well, but when you took this personal view, you took this personal view and put it in a book; right?

A It's a--yes, it's a booklet.

Q And you believed it to be true?

A At that time, yes.

Q You haven't changed?

A I feel that the prospects are satisfactory and good.

Q In fact, they're even better now then when you wrote this pamphlet; aren't they?

A Well, we're getting close to the date, so we all sort of keep our fingers crossed and the environment that comes around we hope is the right one for us.

Q And the purpose of this pamphlet was to try to attract capital to Hong Kong, including after 1997?

A No, the--the purpose of that is really to express to the media, which is the press, and as you know that over the last how many years since the 1989 June 4th event in Bejing, the western media has been very hard on China in terms of it's human rights policies and other policies. And as a result, we felt it is useful indeed for business leaders to go overseas and express these views to the media especially and to the journalists.

MR. CHASE: Well, I'd like to actually have this marked as an exhibit, Your Honor. And I'd like to have it admitted--

MR. JENTES: No objection.

MR. CHASE:--into evidence.

THE COURT: All right.

THE WITNESS: Thank you.

THE COURT: The Challenge of Hong Kong Plus.

THE COURT: It'll be admitted.

THE CLERK: 1731.

(Trial Exhibit 1731 was received into evidence.)

MR. CHASE: Why don't we just--I've only got two copies here, so if you could mark that and I'll show it to the witness.

THE CLERK: Great. Show it at the same time.

MR. CHASE: I'll mark it later.

THE WITNESS: Thank you.

Q (by Mr. Chase) Mr. Woo, we've handed you Exhibit 1731; is that your The Challenge of Hong Kong Plus book?

A Yes.

Q Now, Mr. Woo, one final set of questions here. Let me talk to you real quick about programming for Wharf Cable, okay?

A Yes.

Q Now, you expressed strong views in mid-1994 about the inadequacy of Wharf Cable's programming, did you not?

A I don't recall specific mentioning of that.

Q Why don't you look at Exhibit 1403.

A I don't have it.

MR. CHASE: Well, I'll tell you what; Your Honor, it looks like we're probably at your--the witching hour here.

Do you want to just let it go until tomorrow?

THE COURT: All right.

MR. JENTES: Oh--

THE WITNESS: Oh, please.

MR. CHASE: Well, I'll tell you what, if he wants--I'll tell you what.

THE COURT: We've got two people that have to catch a bus.

MR. CHASE: Tell you what. Mr. Woo, I have no further questions.

THE COURT: All right.

MR. CHASE: Okay.

MR. JENTES: I have four words.

THE COURT: All right.

MR. JENTES: I have no questions.

THE COURT: All right.

MR. CHASE: Thank you.

THE COURT: You're excused--

APPENDIX DL

Excerpt from the Direct Examination of E. Fung

March 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6581:20-6588:13; Transcript 4403:20-4410:13)

Excerpt from the Direct Examination of E. Fung

March 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6581:20-6588:13; Transcript 4403:20-4410:13)

Q All right. Let's look next at Exhibit 384. This is in the defendant's jury book at Tab #13. Do you have that Mr. Fung?

A Yes.

Q Exhibit 384 is a memo from Sonjia Norman to you, August 24, 1992; subject, second draft Wharf Cable joint venture considerations. Now, by this time, had you sent to her your second draft of the joint venture considerations?

A Yes, I had.

Q And, her first paragraph of her memo says, "Thank you for your memorandum of 1 August 1992 enclosing your version of the revised joint venture letter of intent. I have since received the lawyer's rewritten version which, although is stylistic different from your version, essentially covers the same points. I've reviewed both versions of the document and have the following comments." And, it says, "Corporate structure and shareholdings", and then there's a little parenthetical here in brackets that says, "Mike, has the 10 per cent share been agreed?" Do you know to whom she was addressing that comment?

A Yes, this is to Mike Fries.

Q Okay. So, did you receive this memo?

A Yes, I did.

Q So, it was sent to you, but it included--embedded within it were questions from Sonjia Norman to Mike Fries. Is that correct?

A That's right.

Q So, he must have gotten it, as well. Is that--

A I think it was probably a simultaneous thing. She wanted to put her points down, any open queries she had with Mike, and at the same time, let me know about them, as well.

Q Okay. And the next paragraph Sonja Norman says to you, "On behalf of UIH, our signing of the full shareholders agreement after this letter of intent should conditioned upon; one, our approval of the financial, operating and programming plans; two, Board consent on both sides; three or C, award of the local franchise; and, D, the subscription by NYNEX of 20 percent of Wharf Cable." And then there's another little parenthetical that says, "Mike, this is still our concern."

Now, let me just ask you, go through these one at a time. Did you agree with Sonja Norman that signing a full shareholders agreement after the letter of intent was signed should be conditioned on approval of the financial, operating and programming plans?

A Yes.

Q Did you agree that signing of the full shareholders agreement after the letter of intent was signed should be conditioned upon Board consent on both sides?

A Yes, I did.

Q Did you have an understanding of what Board consent on both sides meant?

A That means the Board's approval of the terms of the shareholders agreement.

Q Which board?

A The boards of all parties involved in the--in the agreement.

Q And who would that be?

A Oh, UIH, NYNEX and Wharf.

Q Okay. You agree that a signing of a full shareholders agreement after signing the letter of intent should be conditioned upon award of the local franchise?

A Yes, if there's no award, then there's no business.

Q And then, finally, do you agree with Sonja Norman's statement on behalf of UIH that, "Our signing of the full shareholders agreement after signing the letter of intent should be conditional upon the subscription by NYNEX of 20 percent of Wharf Cable"?

A Yes.

Q You agree with that as well?

A Yes.

Q Now, let me just turn over here on the same document, 384, page 2. Now, these are some further comments by Sonja Norman on your draft letter of intent. And up at the top,

number 3 there is an entry that says, "Corporate Governance;" do you see that?

A Yes.

Q And then after that she writes, "I notice that the letter contains several paragraphs separately dealing with situations which would require a unanimous or super majority veto." Now, I don't want us to go all the way through all these, but what's the topic that she's addressing here?

A This--this is under the general heading of corporate governance and it really talks about control again, who gets to exercise control, is that control exercised in a unanimous manner or is it going to be exercised in a super majority manner where two parties can then vote down one party's suggestions.

Q Just very quickly, the last sentence here says, "In addition to the situations you've already referred to, we would like to see the following issues requiring unanimous consent." And then she lists a bunch of the; operations, alterations to capital structure, borrowing of debt, future capital calls, acquisitions, participations in other businesses, and a great long list that goes all the way from A through K. Did you agree with these?

A No, not all of them.

Q There were some of them you did, some of them you didn't?

A That's correct.

Q So there--was there final agreement as of August 24 on these corporate governance issues?

A By no means.

Q Now, there's an entry also on that page down near the bottom that says, "Capitalization."

A Yes.

Q What was the topic there?

A Well, again, it was an issue of how much money was going to be invested into the venture and also how that money would be invested and under what conditions the money would be invested.

Q Look at the--on the next page, page 3. Now, this is under the capitalization section and there's this entry here under number F that says, "Can we clarify in the letter that all pre-license award expenditures will be for each shareholder's own account." Do you see that?

A That's under G, is it?

Q It's under number F.

A Okay. I think it's G, but--

Q On page 3.

A I--I see that phrase.

Q I'm sorry. It's--I didn't see--you're right. There's F and it is number G. It was sort of blocked on the page I've got here.

A Yes, I see it.

Q That was UIH's proposal in this letter?

A Well, I'm not quite sure whether she's asking me or Mike, but certainly that--that was the position I think that they wanted to have.

Q Okay. And, now, there's a great--there's again a long list here of issues that are raised by Sonja Norman in her letter on the draft Joint Venture Considerations Memorandum of Understanding. I don't want to go through them one at a time, but just in brief, was there full agreement in all these issues between Wharf and UIH as of August 24, 1992?

A No, there remain many issues outstanding.

Q Now, on this page also, page 3, number 6, is the item "Transfer of Shares." Is this the issue you've talked about previously that we've called liquidity?

A Yes, that's--that would be right.

Q Now, if you look over at the next page, the last page of this document, page 4, the first full paragraph on the page says, "There must be an acceptable liquidity formula for UIH as a minority shareholder available from year seven onwards." And then a question, "Mike, should we consider some form of option for UIH triggered in certain events?" And then there's a little mark out here on the side with a question mark. Are those your notes, by the way?

A Yes, they are.

Q Okay. Why'd you put a question mark out here?

A Well, you know, we had been expressing to UIH that, look, you know, when the time is right to get out of this business,

it'll be right for everybody we thought. Rather than having different partners have different time horizons for thinking about this business, so my question mark on it was, gee, you know, do I really want to agree to this? They want to be able to get out seven years after they come into the deal and, of course, you know, we wanted very much a very long term horizon, not necessarily that we wouldn't let people out, I mean, we can always talk about it, but we didn't want to give the investor a certain right to be able to exit. We just wanted to be able to say, look, guys, let's talk this over. If it's right, then let's make an agreement to do so.

Q So on this transfer of shares liquidity issue, was there agreement between Wharf and UIH as of this date, August 24, 1992?

A Oh, no. This is a very important term and there was definitely not an agreement.

APPENDIX DM

Excerpt from Direct Examination of E. Fung

March 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6564-6565; Transcript 4386-4387)

Excerpt from Direct Examination of E. Fung

March 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6564-6565; Transcript 4386-4387)

know, you have to kind of keep going through this stuff time and time and again in order for people to stop making concessions and for the consensus to build.

Q So, this is August 3 and 4, 1992. Did you get all those issues on partnership structure, terms, and conditions resolved in this meeting?

A No, it's a very complex set of issues, and we hadn't got any closer really at that time.

Q You weren't any closer than you'd been back in June, is that fair?

A Yeah, I think we talked about it and we had better understanding, but certainly no agreement or consensus.

Q What about this third bullet, "Your level of UIH commitment in financial standing." What was that about?

A Well, I had inserted this as a specific agenda point because up until then we had made requests to UIH to furnish us with their financial statements and with information about themselves, and had received no real response.

Q Well, so what did you say at the meeting?

A Well, could you give us something that could allow us to assess, you know, how financially capable you are as a company.

Q What did you care about their financial standing?

A Well, this is important because, you know, the entire project is about $400 million and were they to come in--oh, sorry, the entire project in its first inception, meaning that for cable television, is $400 million. If we add the telecom--that's even higher. But, just, in itself, the $400 million, if UIH would have come in for 10 per cent of that, that's a $40 million figure. We had to have relative assurance that UIH could come up with the $40 million to make an investment--and we anticipated that would in a very short period of time because once we won the license, we intended to get going--that they had the financial wherewithal to make that investment or otherwise we were wasting our time.

Q Were you concerned about NYNEX, for example, and its financial standing?

A No, I wouldn't have been concerned about Nynex because from my financial days, NYNEX was rated as a AAA company.

Q What does that mean; rated as a AAA company?

A Well, AAA means the best financial rating that you can get meaning that they're the most financially stable and capable company. They rank amongst the most financial and stable companies in the U.S. This is through Moody's and S&p and various other rating companies.

Q Your next bullet here and the last one I'll ask you about says, "Memorandum of understanding (next step?)."

A Yes.

Q Did you discuss that issue at this meeting?

A Yes, we did.

APPENDIX DN

Excerpt from the Direct Examination of E. Fung

March 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6513:07-6524:14; Transcript 4335:07-4346:14)

Excerpt from the Direct Examination of E. Fung

March 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6513:07-6524:14; Transcript 4335:07-4346:14)

Q (by Mr. Munson) Mr. Fung, you just testified about the idea of selling shares to the public to get liquidity of an investment; correct?

A Yes.

Q And what I wanted to ask you was whether Wharf had a view of that possibility?

MR. CHASE: The only reason I'm making the objection is, Your Honor, because we've had testimony about UIH having an IPO, and I think he's talking about something different here and I want to make sure that's clear.

THE COURT: You can bring it out on cross.

Q (by Mr. Munson) Can you answer the question, Mr. Fung?

A Sure. I mean, Wharf's--the difference was that Wharf was already a public company and UIH was a private company. So we would have to, you know, think very hard about the fact that if we were to take this new venture and take it public at some point in time, what impact that had to our existing position already as a public company. You know, there are serious valuation concerns that one would have regarding whether you view the value of this new entity, and whether the sum of the parts would equal the whole or maybe even exceed the whole or be less than the whole. So those issues were very difficult for Wharf because we were already a public company. It was less a concern or an issue with UIH.

Q That sounds like a fairly complicated question to resolve. Did you get it resolved that day at that meeting?

A No, you can't get it done in one meeting.

Q What about--and I just have a couple more questions on this meeting--what about restricted transactions? Were there any discussions about restricted transactions at this meeting?

A Yes, restricted transactions being, again, whether you could sell your shares to somebody else or whether once you're an investor in a company, whether you could do various things that might compete against other partners or the company itself. So these were all transactions underneath the things that might conflict with other partners.

Q Does this relate to this whole governance majority control, minority protections issue?

A It does, yes, because any time you upset the apple cart in any one of those areas through a restricted transaction, or by way of a restricted transaction, we had to be able to address it so that the status quo was maintained.

Q Were there any discussions at this meeting about the question of super-majority versus unanimous approval?

A Yes.

Q In a nutshell, what was discussed about that?

A Again, this was the whole concept of having--not having a face-off between one partner versus another. We wanted to face-off, if there was going to be a face-off, where it was done with two parties agreeing and out ranking one party. Okay?

Because in a one on one situation, it gets very, very sticky. You either win or you either lose. There's no middle ground.

When you have one party--when you have sort of a triangular relationship, then what happens is that it's a lot easier to accept the fact that two parties made a decision against you, than if you're singularly arguing against one party, regardless of how large your investment stake happens to be. It's just--you know, if you're going to disagree between two parties, you know, somebody is going to be upset.

Whereas, if you're going to disagree between a triangle of parties, then at least you can say, yeah, you know, hey, there was a bunch of people who took a different view than I did, but two of those people out ranked me and they then proceeded to, you know, make that judgment. And it's a lot easier to accept, and we thought that particular structure would be the easiest in terms of how to structure the relationships between the parties in this very, very volatile and very, very difficult industry that we were in.

Q Did you reach agreement on those governance and minority protection issues?

A No, we did not.

MR. MUNSON: Your Honor, I'm about to change gears and go into a--

THE COURT: Probably a good time then?

MR. MUNSON: It would be a good time from my perspective.

THE COURT: All right, let's take the noon break and come back at 1:15, please.

(11:54 a.m. - Jury excused.)

THE COURT: We'll be in recess.

(11:55 a.m. - Whereupon, the lunch recess was taken.)

AFTERNOON SESSION

(At 1:25 p.m. on March 20, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: We've decided this weather is a severe blow to agnosticism.

(Jury present.)

THE COURT: Go ahead, please.

MR. MUNSON: Thank you, Ladies and Gentlemen of the jury, Your Honor, Mr. Fung.

DIRECT EXAMINATION BY MR. MUNSON RESUMES:

Q When we broke for lunch, you had been talking about the meeting that you and Mr. Ng had on June 11th with Mr. Fries and Mr. Mark Schneider from UIH.

Do you recall that?

A Yes.

Q I'd like to show you Exhibit Number 244, which is in the jury book at Tab 8, and ask if you can--this is a document entitled Wharf Cable/UIH key JV terms. Do you know what this is?

A Yes, I do.

Q What is it?

A This is something that was actually drafted by UIH, and handed out at the meeting.

Q I'm sorry?

A A document that was drafted by UIH and handed out at the meeting.

Q And when was it handed out?

A I believe it was handed out at the meeting.

Q If you'd look at the last page of the document in the lower right-hand corner, Page 4?

A Yes.

Q It says M. Fries, June 11, 1992?

A Right.

Q Do you recall receiving this at the meeting that you had with UIH on June 11th?

A Yes, I do.

Q If you look at the first page, it says partners, and then over to the right--Mr. Gilmore gave me this expandable pointer and I'm going to try to use this to point. It says--

THE COURT: That's what it's for.

MR. MUNSON: I know.

THE COURT: Okay.

MR. MUNSON: But the emphasis was on the try.

THE COURT: Okay.

MR. MUNSON: Remembering that I'm Mr. Low Tech here. This is something else I can follow up with, so I have to be careful. But let's give it a try.

Q (by Mr. Munson) On the left-hand side at the top, it says partners, and over on the right-hand side, there--it says "Wharf, UIH, NYNEX unidentified media partners."

Did you have discussion on those topics in this meeting?

A Yes, we did.

Q What, in brief, did you discuss?

A Well, this was actually reflecting what we had said earlier to UIH in the sense that we were looking to bring in, you know, a telecom partner, a cable partner and perhaps a media partner, being more specifically a programming partner.

Q When you say here unidentified media partner, this is this potential programming partner you were talking about?

A That's correct.

Q Okay. What about this next entry here, "Need approval from all parties to bring in new partners"?

A Well, that would mean that everybody would have to accept everybody else in the sense that everybody would have to go back and get board approval and so on and so forth to get actually into this agreement.

Q Now, this document, Wharf Cable/UIH key JV terms, this was written by Mr. Fries from UIH; correct?

A Yes.

Q And it was given to you and Mr. Ng at the meeting on June 11th?

A Correct.

Q So these then were the views that UIH was putting forth from their side; is that correct?

A That's right.

Q Look at the ownership question. What was the--was there any discussion on this ownership issue?

A Yes, there was some discussion regarding, you know, UIH wanted to increase its stake from 10 per cent, but these numbers generally reflected what we had told them from the outset.

Q Was there any resolution in the meeting on what the ownership percentages might be of this investment?

A No, only the fact that UIH said well, look, you know we feel a little low at 10 per cent and we would like to increase that percentage.

Q So there was not a resolution of what NYNEX investment or a UIH investment or an unknown investment might be; is that correct?

A Not at that time, no.

Q What about this entry here that says, "Investment per approved business plan expected to be $400 million unleveraged," what did UIH have to say about that?

A Well, this was a number that we had sort of targeted as being just one part of the investment for the cable television side of the operations. And unleveraged basically means that without having to go out and borrow. So UIH was--you know, UIH knew that that was the size of the investment that was intended, at least the initial investment. There would be more. The size would increase over time as we built additional facilities, and so on.

Q Let's look at--on Page 2 of this same document, there's an entry, "Restricted transactions," and then it says, "The following transactions will require unanimous consent of the board." What was the discussion from UIH's standpoint on this issue?

A Well, this actually came back to the corporate governance issue that we had talked about in the sense that when it says unanimous consent, this would have to be the agreement of every single party to the agreement, and these nine issues, if you like, would have to have unanimous board consent. And some of these issues we had wanted to, you know, sort of push as unanimous. Some of them we wanted the super-majority concept to be in place.

Q So this was UIH's proposal on what kinds of transactions there would have to be unanimous board consent?

A Yes, transactions and/or actions made by the company.

Q Was there agreement on this issue between UIH and Wharf?

A No, absolutely not.

Q And this goes back to what you testified before about the majority control, minority protections issue; is that right?

A Yes, that's right.

Q On Page 3, there is an entry that says, "Transfer provisions, assignment." Do you see that?

A Yes.

Q What was the topic of this suggestion by UIH?

A It primarily addressed their need for liquidity. We had talked I think previously about how long one wanted to be in the investment, and what these transfer provisions were about was UIH's views as to how long they wanted to stay in the investment.

So essentially, they were committed to stay for the first five years, as you can see from here, but then after year five, they wanted certain provisions--sorry--from years four onward, they wanted certain provisions that allowed them to take an exit from the investment.

Q On this liquidity issue again that UIH is raising here, was there agreement reached at this meeting?

A No.

Q What about this next entry down here, conditions precedent? What was it that UIH proposed as conditions precedent?

A Well, conditions precedent, just to explain, means what would need to happen first before any shareholder agreement was signed, so these are conditions that would need to precede any formal agreement, and these things on the right, you know, which include things like board consent, and by board consent, you know, we interpret that as board consent of all members, all parties to the agreement.

Obviously, the license, if you don't have a license, you can't have a--you really don't have a deal from our standpoint. Regulatory approvals, and final documentation, meaning that all the I's have to dotted, all the T's have to be crossed, that this wouldn't be a simple, you know, handshake agreement, that we would have to have it fully documented and legally--

Q When you say fully documented, what exactly do you mean?

A Well, that means that we would have to enter into a formal agreement in the sense that we would have to have a shareholder's agreement that would have already had all the various points sort of, you know, highlighted here, all of those would have to have occurred before we had that shareholder's agreement signed.

Q The entry, the first entry here, approval and financial operating plan; did UIH say who would have to approve the financial and operating plan to satisfy the conditions precedent?

A Well, this again went a little bit back to the issue of power and so on. You know, our view was that it took two out of

three to get that plan approved. UIH's view I think was that it had to be unanimous.

Q So there wasn't agreement on this issue?

A No.

Q As to who had to approve; is that right?

A No, not yet.

Q On board consent, what did UIH say about whose board had to consent?

A Everybody's board. I mean, their board certainly, but our board and whoever else the partners were going to be.

Q At this point, Mr. Fung, we're in June, the middle of June, 1992, did Wharf, as far as you knew, intend to reach an investment agreement with UIH if all the conditions could be met?

A Yes, the standard part of the process is, you know, you try to meet in the middle on a lot of these issues. But as far as we were concerned, we were hoping that we could have UIH as an investment partner in the venture.

APPENDIX DO

Excerpt from Direct Examination of E. Fung

March 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6782-6816; Transcript 4604-4638)

Excerpt from Direct Examination of E. Fung

March 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6782-6816; Transcript 4604-4638)

A You said 1313?

Q 1313, yes. Are you there? Are you at 1313?

A Actually, I don't see it. 1313; right?

Q 1313. It's your memo of November 12th to Mr. Ng.

A Yes.

Q All right. Do you remember this document?

A Yes.

Q Now, before the lunch recess, you said that this document was in response to Mr. Ng's sending to you Mr. Schneider's November 11, 1993 letter that was transmitting UIH's proposed language for its securities offering; do you remember that?

A Yes, I do.

Q And that's the November 11th letter, Mr. Ng sends it to you, says copy Emil, comments; right?

A Correct.

Q All right. Then the next day, you give your comments in response to that letter; right?

A Yes.

Q And you observed that the proper legal disclosures had been made by UIH in their proposed offering; right?

A Yes.

Q And then you go on to say, "Our next move should be." Do you see that? "Our next move should be."

A Uh-huh.

Q "Our next move should be to claim that our directors got quite upset over the representations and have, therefore, instructed us to settle up on the TCA only." Do you see that?

A That's correct.

Q Now, that was false, wasn't it?

A That was false?

Q That was totally false, wasn't it?

A I would say no, this was a suggestion. So in what sense is it false?

Q Well, okay, in this memo, you're saying to Mr. Ng as to what he should do about this disclosure that UIH is putting out is to say, "Our next move should be to claim that our directors got quite upset." Do you see that?

A Yes.

Q Now, your directors never saw it, did they?

A No, they didn't.

Q And your directors didn't get quite upset over it, did they?

A No, they didn't.

Q And so your suggestion is a total fiction, isn't it?

A Well, actually, if we had showed our directors, I'm not quite sure what the result would have been.

Q You don't know, do you?

A No.

Q But you're saying to Mr. Ng our next move should be is to claim that, and it's just a fiction, isn't it?

A Well, as I said--

MR. MUNSON: Objection--excuse me.

THE COURT: You've been quiet for so long--

MR. MUNSON: Let me start again. Objection; asked and answered.

THE COURT: Overruled.

Q (by Mr. Chase) You can answer, Mr. Fung.

A Sorry. Can you repeat the question?

Q Yes. At that time, it was a total fiction that your directors were upset over the UIH proposed disclosure?

A At that time, we had not presented the language to the directors.

Q And then the next thing you say is, "And, therefore, have instructed us to settle up on the TCA only." Right?

A Correct.

Q And as of the time of this memo, no director had instructed you to settle up on the TCA only; right?

A This is correct.

Q Another total fiction; correct?

A It depends on how you define fiction, but--

Q Well, this is the advice that you're giving Mr. Ng as to what he's supposed to do as your next move; right?

A Yes.

Q And you're saying we should claim our directors got upset, when your directors didn't even know about this; right?

A Yes.

Q And you're saying that they instructed us to settle up on the TCA, when they did no such thing; correct?

A That's right.

Q Then you go on to say publicly--do you remember the language UIH used that you thought was okay with the word opportunity? And you say, "Publicly, we do not acknowledge the opportunity, and speak only to UIH's involvement vis-a-vis the TCA." Do you see that?

A Yes.

Q And so you're saying that Wharf should deny publicly that UIH has an opportunity at this time to invest in the cable venture?

A No, I believe that my use of the word opportunity here referred to a possible misuse of the word opportunity by UIH.

Q Excuse me, sir. Your recommendation to Mr. Ng is "Publicly, we do not acknowledge the opportunity." Do you see that?

A Yes.

Q And so you're saying to Mr. Ng we do not acknowledge that UIH has an opportunity to invest in this venture; right?

A Yes.

Q Now, you do recall that when UIH did its S-1 registration for its IPO back in July, 1993, some five or six months earlier, they did use the word opportunity; right?

A They also used the word option.

Q You think they used the word option?

A In earlier drafts, yes.

Q Well, first of all, is it your testimony UIH sent you drafts of the S-1 registration statement?

A I believe it was Smith Barney that sent me excerpts from the S-1 registration statement.

Q From the statement or from drafts of the statement?

A From the drafts of the statement.

Q You say Smith Barney sent you drafts of the S-1 registration statement that UIH did; is that your testimony?

A Yes.

Q And it's your testimony also that you saw the word option in there?

A That's correct.

Q Okay. And this would have been sometime when, in the spring of 1993?

A I don't recall exactly.

Q All right. But you have testified that by the time the thing was in its final form, it used the word opportunity; right?

A I don't recall, but the word option was not in there.

Q I believe you testified on direct that the word opportunity was there, and that was satisfactory to you. Is that consistent with your memory?

A Are you talking about the first offering or--

Q I'm talking about the prospectus from UIH that went effective with the IPO in July, 1993, and the word opportunity was used. Do you remember that?

A I honestly don't recall.

Q Well, did you believe in July, 1993, that UIH had an opportunity to invest in the Wharf Cable project?

A Yes, I did.

Q And did you believe they had that same opportunity in November, 1993?

A I did.

Q Same opportunity; no change?

A The opportunity--well, again, how do you define opportunity? My concern was that there was going to be a misuse of the word opportunity.

Q And you're the one that told Mr. Ng to say we do not acknowledge the opportunity; right?

A Yes.

Q Now, in your direct examination, let's talk about the word option for a few minutes. In your direct examination, you testified about Exhibit 369. Could you find Exhibit 369, please? It's in the plaintiff's jury book.

A Okay.

Q Now, do you remember testifying about this document yesterday?

A Yes.

Q On direct examination. UI Asia; do you remember that?

A Yes.

Q And you testified it's a document that you got sometime in August, 1992?

A Yes.

Q And you remember your testimony was that you got it in response to a request that you be provided general information about UIH so that you could make some disclosure about them in whatever you were preparing at the time?

A Yes. Actually, I think I corrected that. Didn't I receive this in September?

Q I believe you testified that you received it in August.

A And that I subsequently--said that I received it in September.

Q Well, I don't care. When did you receive it?

A Let's make it September.

Q You're sure of that?

A I think so, yes. I was reminded from subsequent documents that it was September.

Q All right, you want to say September. Well, let's just talk about the substance of it and we'll deal with the timing in a moment.

A Yes.

Q Look at the section on Hong Kong, please. Do you see that on Hong Kong where it says, "UIH Asia Investment Company"?

A I do.

Q And it says, "UIH Asia Investment Company has the option to acquire a 10 per cent interest in Wharf Cable."

A Correct.

Q "A consortium bidding for the cable license to serve Hong Kong." Do you see that?

A Yes.

Q And this document was produced in your company's files?

A It looks like it is, yes.

Q And it was your testimony yesterday that you saw the language and you went to Mr. Moss and you complained about the language; right?

A I think I said I went to one of them, Mr. Moss or Mr. Pittman; I'm not quite sure.

Q Well, okay, you went to one of the two and complained about the language. That's your testimony?

A I pointed--yes, I pointed out the inconsistency.

Q All right. Now, will you please open your deposition to Page 465?

THE CLERK: Volume?

MR. CHASE: Volume 2.

THE CLERK: I hand the witness a transcript of deposition taken May 30, 1995, Volume 2.

Q (by Mr. Chase) Do you want to turn to Page 465, please? And I'm going to look at Line 16 and ask you whether certain questions were asked and whether you gave certain answers. Could you turn to Page 465? Are you there?

A Yes, I am.

Q Now, I'm questioning you there about Exhibit 2508-A. And if you wish to look, you can see that that is Exhibit 369. That's the same thing that's this UI Asia option memo.

A Yes.

Q Do you see that?

A Yes.

Q All right. Now, this is almost two years ago and you were under oath; right?

A Yes.

Q Prepared for 30 hours for this thing?

A Maybe, yes.

Q All right. How many lawyers did you work with doing that?

A Primarily one.

Q And that was in Hong Kong; right?

A Correct.

Q All right. And the question was, "Do you remember receiving some of the pages contained in 2508-A in conjunction with the documents Mr. Hudon was sending to financial institutions?"

Answer, "Yes, I do."

Question, "Now, just so I want to make sure I understand your testimony, are you saying that you have never seen the page that says UIH Asia has the option to acquire a 10 per cent interest, or are you saying you don't recall having seen that page?"

Answer, "I don't recall having seen that page."

Do you see that?

A I see it.

Q And then it goes on.

Question, "So it's possible you saw it and you just don't recall it at this time?"

Answer, "I don't recall seeing this page."

Question, "Do you recall at any time prior to the bid, calling up Mr. Hudon or anybody else at UIH, objecting to representations by UIH that it had an option to purchase a 10 per cent interest in the cable business?"

Answer, "I don't recall."

Do you see that?

A Yes.

Q Now, those questions were asked and those were your answers almost two years ago under oath; right?

A Correct.

MR. MUNSON: Your Honor, may I request a fairness reading on that same page, 466, Lines 14 through 21?

THE COURT: All right.

MR. CHASE: I'll keep going.

MR. MUNSON: Just 14 through 21, please.

MR. CHASE: Well, I'll keep going for a while, Mr. Fung.

Q (by Mr. Chase) "Do you recall calling any bankers or anybody else explaining to them that UIH did not have a 10 per cent--an option to purchase 10 per cent of the cable business?"

Answer, "I do recall discussions with bankers where they raised the issue of UIH having a 10 per cent interest, and saying--and confirming to the negative."

Question, "When were those discussions?"

Answer, "Various points in time, stretching when we first started talking to banks, as well as some investment analysts who would call up on the way as well."

Question, "So you were aware early on that UIH was telling bankers that it had an option to purchase a 10 per cent interest in the cable system?

Answer, "How do you define early on?"

Question, "When did you first start talking to banks, to your knowledge; when did UIH first start talking to banks?"

Answer, "It was probably in mid 1993."

Question, "So it's your testimony that you did not have any of these discussions prior to mid ' 93?

Answer, "Correct."

Question, "Do you recall in October, 1992, visiting certain banks here in Hong Kong with Mr. Hudon?"

Answer, "No, I don't."

Question, "You don't recall that at all?"

Answer, "No."

All right, now, based on what I read and based on the fairness reading, at the time of your deposition, you didn't recall ever seeing this page, but you recall talking to banks sometime in mid 1993; correct?

A Yes.

Q And that's what you said at your deposition?

A Yes.

Q All right. Now, I want you to look at another exhibit that's in the book there, because we gave you another shot at it at your deposition. Look at Exhibit 2508 in the white book. This is probably also in the jury book, I believe. I'm sorry, it's not 2508; it's 416. 2508 was the deposition. If you'd look at 416, please? Are you there?

A Yes, I am.

Q Now, this is a portion of Exhibit 369 that is called United International Holdings, cable T. V. is our business and if you look down in the lower right, you see NYNEX control numbers in the lower right on the first page. Do you see that?.

A Yes.

Q And that means it was produced from NYNEX's files in this case.

A Okay.

Q Now, if you'll look up at the fax line, one of the legible ones, you can see that this was faxed in September 3, 1992 from Wharf Cable; do you see that?

A Yes.

Q And this document contains the identical language that we've just been focusing on. If you'll look over to the Hong Kong section--

A Okay.

Q --it says, "UIH Asia Investment Company has the option to acquire a 10 per cent interest in Wharf Cable, a consortium bidding for the cable license to serve Hong Kong." Do you see that?

A Yes.

Q And that's faxed from Wharf Cable on September 3, 1992; correct?

A Yes.

Q Now, we asked you about that at your deposition. If you'll look at Page 460, same volume?

A Okay.

Q That was Deposition Exhibit 2508, and I'm going tc do the same exercise here. I'm going to ask you whether I asked you these questions and whether this was your answer under oath almost two years ago.

"Let me ask you to look at a document that's been marked as Exhibit 2508. This is a document entitled United International Holdings, cable T. V. is our business. I've got an extra one. If you'll look at that for a moment, please, and I'll call your attention to the fax indication at the top of the document on certain pages where you can read it, indicating it was faxed from Wharf Cable on September 3, 1992."

MR. MUNSON: Objection, Your Honor, if I may. Maybe I missed it, but I don't know that there's a question that's been asked and answered on which this testimony is--his deposition testimony is being read for impeachment. If all that counsel is doing is reading the deposition testimony to the witness, I don't know that that's appropriate.

MR. CHASE: Your Honor, this witness testified yesterday that he remembers this, and twice in his deposition two years ago, he didn't remember it. That's impeachment.

THE COURT: The objection is overruled.

MR. CHASE: Thank you.

MR. MUNSON: One other thing, Your Honor. I believe counsel represented here that Exhibit 416 is part of Exhibit 369, and I don't-

MR. CHASE: Your Honor, I didn't make that representation. I have a very short amount of time here. The representation was that this document contains some of the same pages as 369. It's not part of that document.

THE COURT: Go ahead.

Q (by Mr. Chase) Mr. Fung, back to you. I'm going to start reading from Page 22--from Line 22 on Page 460. "And I also call your attention to the fax indications at the top of the document on certain pages where you can read it, indicating it was faxed from Wharf Cable on September 3, 1992. Do you see that?"

Answer, "Yeah."

"Okay, do you recall this document?"

Answer, "I've seen portions of it before."

"Have you seen the portions of it contained here in Exhibit 2508?"

Answer, "Some of it I haven't seen."

"Could you tell me which parts of it you haven't seen?"

And then your counsel makes an objection, and you say, Answer, "This particular reference on 000957 to an option to acquire 10 per cent interest in Wharf Cable, I haven't seen that."

Question, "You're certain of that?"

Answer, "Yes."

Now, those were questions asked of you and those were your answers under oath almost two years ago. Right,

Mr. Fung?

A Correct.

Q Now, let's talk about Mr. Hudon for a second. Mr. Hudon at that point in the August, September time frame, was, with your knowledge--

MR. MUNSON: I'm sorry. Excuse me. Could you read just down through Line 11 on Page 462? Lines 1 through 11 on Page 462.

MR. CHASE: Well, we'll do more reading here. Which ones do you want?

MR. MUNSON: 1 through 11 on Page 462.

MR. CHASE: Oh, okay. Glad to.

"Do you know whether it got into the possession of Wharf?"

Answer, "I don't think it did get into the possession of Wharf."

Question, "Can you tell me, please, how Wharf happened to be faxing the document on September 3rd?"

Answer, "UIH had their people inside Wharf's offices. Our fax machines were not limited by code. Therefore, any UIH person could have faxed it out of Wharf's premises."

I'll go on. "So it's your testimony that you've seen this document that's 2508, but not the page that says Hong Kong, UIH Asia Investment Company has the option to acquire a 10 per cent interest in Wharf Cable?"

Answer, "It is my testimony that I have not seen this document per se. I have seen portions of this document. I don't know whether this one is full document, but I've seen various pages of this document, because it seems to be consistent with other pieces of information before. Whether this is one single document or not, I can't attest to that."

Okay, now, did I read all that correctly?

THE WITNESS: Yes.

Q (by Mr. Chase) And you consistently testified two years ago that you never saw that page that says UIH option?

A That's right, I testified.

Q And you even denied that anybody connected with Wharf sent it out of Wharf's offices to NYNEX?

A I'm not sure I denied it. I said it could be a possibility.

Q It's a possibility. But you don't know who sent it from Wharf to NYNEX, do you?

A No, I don't.

Q It's equally as good a possibility it could have been somebody on your staff?

A It could have been, yes.

Q All right. Now, let's talk about Mr. Hudon. Look please, if you will, at Exhibit 343. And I'm going to have to give you a copy because I don't think it made it into any of the notebooks.

Exhibit 343 is a letter from Sonjia Norman to Mr. Stephen Ng and Mr. Emil Fung, and it says, "Bill Hudon, president of United International Cable, and Mr. Clive Ng will be arriving in Hong Kong on Wednesday, August 26, 1992 and would like to meet with you to further discuss the funding situation for UIH Asia." Do you see that?

A Yes.

Q Now, do you recall meeting with Mr. Fung at or about--I mean Mr. Hudon--you are Mr. Fung. Do you remember meeting with Mr. Hudon at or about August 26, 1992?

A Around that time, yes.

Q In that time? And the purpose of meeting with him was because he was going to be going to various financial companies trying to raise money for the investment?

A That's correct.

Q And one of those was Merrill Lynch?

A Yes.

Q And you set up the meeting with Merrill Lynch?

A Yes.

Q Let me ask you to look at Exhibit 564. I'll bring it to you. It's easier than playing with notebooks.

Now, Exhibit 564 is an October 2, 1992 memo from Mr. Hudon to Mr. William Ng and Mr. Clive Ng. Do you see that?

A Yes.

Q And I'd like to focus your attention on the fourth page of the document.

A Uh-huh.

Q Now, it says, "Merrill Lynch," and it's got a couple of names next to it. Do you see that?

A Yes.

Q And it says, "Wharf included us in a meeting which Merrill Lynch had scheduled with them to discuss financing for Hong Kong. We presented UI Asia and--agreed to follow up on the concept." Do you see that?

A Yes.

Q And UI Asia is Exhibit 369, is it not?

A Yes.

Q And that was presented by Mr. Hudon to Merrill Lynch with you sitting right there; right?

A I'm not sure that the document was presented to Merrill Lynch at that time. In fact, we had spent most of the meeting talking about Wharf Cable, and then it was at the end that they said, well, let us tell you about where Ui Asia was going, and I seem to recall that they also set up another appointment to meet.

Q Wait a minute. Mr. Hudon goes to a meeting with Merrill Lynch that's set up by you; right?

A Correct.

Q For the purpose of raising money in the Hong Kong cable project?

A Not for the absolute purpose. It was just coincidental that we were going to actually talk to Merrill Lynch at the same time, and we said why don't you guys join us in our meeting with Merrill Lynch.

Q Mr. Fung, you knew that one of the purposes Mr. Hudon was talking to Merrill Lynch, was to raise money for the Hong Kong investment; right?

A I did, yes.

Q And Mr. Hudon had with him a document called Ui Asia, which this memo indicates he handed out at that meeting; right?

A Give me a minute. I don't see where this document indicated that--I'm sorry--this particular phrase indicated the document was handed out.

Q Well, let me ask you this question. Whether it was at the meeting, before the meeting, after the meeting, is it your

testimony that you deny seeing this document and the reference to Hong Kong in connection with Mr. Hudon going to Merrill Lynch; do you deny that?

MR. MUNSON: Objection, Your Honor; compound. And, frankly, I don't understand the question.

THE COURT: Overruled.

MR. MUNSON: Maybe I'm slow, but--

The Witness; As far as I'm concerned, this was a meeting between Wharf Communications and Merrill Lynch, which I had set up, and which I had also invited Bill Hudon to attend for the purpose of convenience, because they had said, well, we'd like to meet with some people in Hong Kong. Who are you meeting with? And I said Merrill Lynch is on my calendar because they're coming into our offices to talk about the Wharf Cable project. Richard Wakter (phonetic) was one of the people who was a specialist in this area, and it so happened that his schedule met up with Hudon's schedule and, therefore, we said why don't we do this together.

Now, as I recall, that meeting was, I would say, you know, give a rough guess, 70 to 80 per cent of the discussion of that meeting was regarding Wharf Cable itself. I was giving a very, very long detailed explanation of what we were doing at Wharf Cable, because it was our presentation to Merrill Lynch regarding our company.

Now, when those discussions were completed, then Bill stood up--or not stood up--but Bill then basically took the floor and said, well, you know, here's where we are as a potential investor into Wharf Cable, and we'd like to explain to you how we are going about raising funds to come into this venture.

Q (by Mr. Chase) And he distributed to Merrill Lynch the UI Asia document?

A I don't recall that.

Q So you think he's just wrong in this memo?

A Well--

Q Let me ask it differently, because--

A The memo said they presented--

MR. MUNSON: Objection, Your Honor, I'm sorry. Mr. Chase asked the question and the witness started to answer.

THE COURT: He can withdraw the question.

MR. CHASE: You know, Mr. Fung, I'm trying to--

THE COURT: Overruled.

MR. CHASE: I'm trying to do this within the space of a very short period of time, and so I'm going to ask a different question here.

Q (by Mr. Chase) Mr. Hudon sat in that witness stand where you're sitting right now, under oath, and he testified that he met with Merrill Lynch, that you were there, that he cleared this thing with you beforehand, and he handed it out to Merrill Lynch in connection with that meeting. Do you deny that?

A I don't recall. I don't think he did.

Q Do you deny it?

A On the basis of my understanding, yes, I do.

Q So you think Mr. Hudon is just lying?

A He might have had a better recollection than I did.

Q And it's your testimony that he came to Hong Kong, and he's got a UI Asia document that talks about a 10 per cent investment right, and he didn't show it to you; that's your testimony?

A That's correct.

Q Mr. Fung, let's talk about another document that you talked about yesterday. Look, if you will, please, at Trial Exhibit 504. 504 is in the plaintiff's jury book. Do you see 504, Mr. Fung?

A Yes.

Q Do you remember testifying about 504 yesterday, and that's this Ernst and Young draft of your bid application, a portion of your bid application?

A I recall.

Q Now, yesterday, your counsel put up on that screen the second page of Exhibit 504, and he said to you--I'm going to try to be as accurate here as I can. He put up on the screen the fax heading from the second page, and he says, "It looks like September 11, 1992; right, Mr. Fung?" And you said, "Yes, September 11, 1992." Remember that?

A Yes.

Q And then you went on to testify that this was a very early draft of this particular part of the bid application, and that Ernst and Young kind of made it up, you don't know where they got this from, but you told them to change it, and this was a very early draft. Do you remember that?

MR. MUNSON: Objection, Your Honor. That mischaracterizes the witness's testimony.

MR. CHASE: Your Honor, I believe it accurately characterizes, but he can deny it if he wants to.

THE COURT: We'll leave it to the jury.

Q (by Mr. Chase) Go ahead, Mr. Fung.

A I'm sorry. Can you repeat the question?

Q The question is you testified yesterday that when you saw this what you characterized as a very early draft of that portion of the application, that you don't know where Ernst and Young got it from, and you told them to go ahead and change it.

MR. MUNSON: For the record, Your Honor, objection. That is not the witness's testimony.

THE COURT: Overruled.

Q (by Mr. Chase) In fact, you testified it was the first draft, didn't you?

A That's correct. I testified it was the first draft, and I also testified that Bill Leininger, who was the person who drafted this, was acting on very, very few instructions from us at that time.

Q All right. And you said this was around September 11, 1992; right?

A Yes.

Q All right. Now, I've blown it up. But, you know, I didn't really need to. Did your counsel show you at any particular time what the stipulated exhibit list said was the date of this document? And by stipulated, I mean agreed to between the parties. Did anybody happen to bring to your attention when they were preparing you for your testimony and talking about this document that the parties have put a 9-21-92 date on this document? Do you see that on the screen over there?

A Yes.

Q September 21, 1992.

A Uh-huh.

Q Yes?

A Yes.

Q Did anybody ever bring that to your attention?

A I don't think so.

Q Well, did anybody let you take a closer look at this thing that you testified was a first draft on September 11, 1992, which I have blown up a little bit bigger? What does that look like to you, Mr. Fung?

A It looks like the number 21.

Q It looks like September 21, 1992, doesn't it?

A Yes, it does.

Q And that's just a few days now before your bid application, isn't it?

A That's correct.

Q Now, it has to be a late draft of your bid application, because it talks about the technical cooperation agreement, doesn't it? It can't possibly be what you testified to yesterday. Go ahead and look down in 5.1.8 in the document.

A Yes.

Q This thing that you call a first draft from early September, 1992 talks about technical cooperation agreement. That wasn't even a glimmer in anybody's eye until September 19, 1992, was it?

A That's right.

Q And this whole section talks about the technical cooperation agreement, so it can't possibly be dated when you were talking about, can it?

A As I recall with regards to the dates, this particular language was the first draft that Bill Leininger had presented to me.

Q And you're saying on September 21, 1992, he presented to you that language and that was the first draft?

A It was his first draft, yes.

Q But now you're agreeing with me about September 21?

A Well, I don't know about September 21.

Q Well, do you deny--I mean, this looks pretty good to me. Do you deny that? Do you deny what the parties have stipulated in this case and what it says right up here on the document?

MR. MUNSON: Objection, Your Honor. Counsel is arguing with the witness when he says it looks pretty good to him.

THE COURT: Sustained.

MR. CHASE: All right, it doesn't look good to me. What does it look like to you?

MR. MUNSON: Objection, Your Honor.

THE COURT: Sustained.

Q (by Mr. Chase) September 21; right, Mr. Fung?

A For what?

Q For that document.

A For that document that you just showed me here?

Q Yes.

A Yes.

Q Right?

A That's what it says on top, yes.

Q And you say that's, in your memory, the first draft?

A It is, because I remember from Bill's interaction with me that that was the first time I--when he presented me with a document that said option, that was the first document that he had presented me on this issue.

Q Let's look at your deposition, sir, Page 455. Page 455, and I'm going to start at Line 16. Question--and if you want to familiarize yourself with this, we're talking about this particular document above that, if you want to go familiarize yourself with it.

Question, "Do you know if there were any other Ernst and Young documents pertaining to the bid?"

Answer, "I only recall Bill Leininger having delivered to me perhaps two sets of these documents, one which was an earlier version, and this was probably the latest version before it all went into word processor."

Do you see that?

A Yes.

Q So you testified almost two years ago under oath that this was the latest version of the two that he ever delivered to you; right?

A Yes.

Q Now, on September 21, 1992, Mr. Fries was in town, was he not?

A Yes, he was.

Q And you met with Mr. Fries on more than one occasion during the September 21, 22, 23 time period; right?

A Yes.

Q And if you'll look at Exhibit 515? Are you there?

A Yes.

Q These are some of Mr. Fries' notes, and we all agree that they're hard to read, but there's one thing we can all agree on. These are dated September 22nd, the next day; right?

A Yes.

Q We got that right, September 22nd, Fries' notes?

By the way, let's go back to Leininger's, Ernst and Young's fax to you, September 21, 1992, faxed from Ernst and Young at 19:50. That would be 7:50 in the evening; right?

A Correct.

Q That's faxed from Ernst and Young likely to you, since you produced it; right?

A I don't know.

Q Well, let me put it this way. Who else would Ernst and Young be faxing this to?

A I don't know. I mean, it could have been any member of the staff.

Q But it would have been to Wharf Cable?

A Right.

Q At 7:50 on September 21, 1992; right?

A Yes.

Q All right. And then the next day, you're with Fries; right?

A Uh-huh.

Q And Fries is writing in his cryptic style, but he writes something I think we all can read, option; do you see that?

A Yes.

Q Now, you and Fries were talking that day about an option, were you not?

A Yes, he had suggested one.

Q He suggested, so he writes it down, or you suggested it?

A No, he had suggested one.

Q And do you deny, sir, that you showed him and talked to him about this Ernst and Young draft that you had received at 7:50 the night before?

A I don't recall that.

Q Okay. If Mr. Fries testified to it under oath, as he did, would you deny it?

A That's his recollection.

Q Let me ask you to look, please--look, please, at Exhibit 503. And you may not have a copy of that, but I'm not going to take the time to let you find out. I'm going to bring it to you.

All right, 503. Wharf Communication Investments, Limited, coordination meeting, 4 o'clock, September 21, 1992, same day as that Ernst and Young draft; right?

A Yes.

Q And you're there, of course; right?

A Yes.

Q And Mr. Ng is there; right?

A Yes.

Q And if you'll look over on the third--the fourth page of the document, it says, "2.2.5. New corporate structure to be explained to the cable team. Await Ernst and Young draft description before explanation." Right?

A Correct.

Q And that's what you were waiting for that day that you got at 7:50 that night from Ernst and Young; right?

A I can't be sure that that's the description.

Q Well, you testified that you got two things from Ernst and Young, an early version and a later version, and this is the later version. There can't be many version in between 4:00 in the afternoon and 7:50 that night; right?

A I don't recall.

Q Okay. And then the next day, you say you met with Mr. Fries. How many times did you meet with Mr. Fries the next day?

A I believe that there was a time where we met for lunch and a time also where we met at the lawyer's office.

Q All right. And then you also met with Mr. Fries the day after that, didn't you?

A I don't recall that one.

Q You had more than one day of meetings with Mr. Fries over this period of time, didn't you?

A I honestly don't recall.

Q Well, you recall then at least two on the 22nd?

A Correct.

Q The day after you get the Ernst and Young draft?

A Yes.

Q All right. I'm making a mess here, but that's because we're moving along.

Let's talk about the technical cooperation agreement. Do you remember that?

A Uh-huh.

Q Okay, Mr. Fung--well--it's all right. We're going to make it. We don't have that much time. We're going to make it.

Mr. Fung, I can't even see it, but I remember what it says. Do you remember testifying about the technical cooperation agreement?

A Yes, I do.

Q Do you remember that?

A Yes.

Q And you remember this morning, it's not that long ago, Exhibit 524, you testified that it was removed because you didn't need them. Wharf Cable was a new company and so how could Wharf Cable have any pre-existing anything, promises, representations, whatever. You testified to that; right?

A I did, yes.

Q Now, as a matter of fact, CNCL, which was the original party named on the technical cooperation agreement, was a newer company than Wharf Cable, wasn't it?

A That's correct.

Q Wharf Cable was formed in the summer. CNCL was formed in September?

A That I don't recall.

Q But you do recall Wharf Cable was even older than CNCL?

A Well, I think the--well, I think the shelf company--I don't know which dates you're referring to. But I do recall that one was older than the other in the sense that the original shelf

registration, but when we in fact made a company, you know, sort of operational, if you will, I believe that Wharf Cable was made operational later than CNCL was.

Q All right. I've got good news and bad news. The good news is for purpose of my question, it doesn't matter. The bad news is I want you to look at your deposition and see what you remembered two years ago about why this language was removed. Look at Page 448.

A Yes.

Q Are you there?

A Yes.

Q Now, we asked you about that very language almost two years ago, and I'll start with Line 4 on Page 448. It says, "Now, this draft that's transmitted in this letter does indicate that 14.7 had been deleted; correct?"

Answer, "Yes."

Question, "And can you recall any of the discussions that led up to the deletion of that paragraph?"

Answer, "No."

"Can you remember any of the circumstances that led up to the deletion of that paragraph?"

Answer, "No."

"Can you recall as of that time any commitments, representations, warranties or other agreements that any of the

parties were trying to preserve which they did not want superseded by this technical cooperation agreement?"

Answer, "No."

Question, "None?"

Answer, "I don't recall."

Question, "Is it your testimony that you recall nothing about the deletion of this Paragraph 14.7?"

Answer, "Yes."

Now, those questions were asked and those were your answers under oath almost two years ago as to why that paragraph was deleted; right?

A Correct.

MR. CHASE: All right. Your Honor--

THE COURT: Okay.

MR. CHASE: --before I start a new subject, as they said in the movie Scent of a Woman, Mr. Fung, "I'm just getting warmed up," but I'll see you in a week.

THE COURT: Have a nice weekend, and drive carefully.

(Jury excused.)

THE COURT: Recess.

(2:23 p.m. - Whereupon, the proceedings were adjourned, to be continued on Monday, March 24, 1997.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

[/s/Mary C. Chevalier]

March 21, 1997

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APPENDIX DP

Excerpt from Direct Examination of E. Fung

March 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6659:05-6660:05; Transcript 4481:05-4482:05)

Excerpt from Direct Examination of E. Fung

March 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6659:05-6660:05; Transcript 4481:05-4482:05)

Q Okay. Now. let's move forward a few days and the TCA, Technical Cooperation Agreement, with UIH was signed when?

A The 25th.

Q And, was there a Technical Cooperation Agreement that was signed with NYNEX around the same time?

A Yes.

Q Now, as of--do you know, was it the same date?

A I believe that we signed simultaneously.

Q Okay. Now, as of that date, September 25, had you made any promise to UIH that it had an option to invest?

A No.

Q Had you made any promise to UIH that it had a right to invest, but not the obligation?

A No, I did not.

Q As of that date, had you ever been told by anybody at Wharf that Wharf had granted UIH such an option?

A No.

Q Or such a right to invest?

A No.

Q Is that a no?

A No, right.

Q And, as of that date, had anybody from UIH ever said to you that UIH had an option to invest?

A No.

Q Or a right to invest, but not the obligation?

A No.

APPENDIX DQ

Excerpt from Direct Examination of E. Fung

March 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6743:11-6745:04; Transcript 4565:11-4567:04)

Excerpt from Direct Examination of E. Fung

March 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 6743:11-6745:04; Transcript 4565:11-4567:04)

Q Let's look at Exhibit 1300. And Exhibit 1300 is dated November 1, 1993, to Stephen Ng from Emil Fung, UIH investment participation right. Did you write this?

A Yes, I did.

Q Did you send it to Mr. Stephen Ng?

A Yes, I did.

Q And what led you to send this to him?

A Well, this was a follow-up from--from that last document where I said I would actually try to quantify and--and put together this proposal regarding this right.

Q Okay. Now, we don't have time, for better or for worse, to get into this in detail, but on the second page of the document, you include this sheet which describes some of the basic terms of what it is that you're proposing; is that correct?

A That's correct.

Q Can you take about a minute and describe what it is that you're proposing here? First of all, it's called an investment appreciation right. What is that?

A Again, the concept that I talked about before, that it wouldn't represent ownership in the company, but it would give you the benefits as if you were an owner in the company.

Q Okay. Now, you've got your principal amount, Hong Kong 300 million. What does that mean?

A That would mean that they would have to invest $300 million into the--to buy this right to purchase this right.

Q Okay. And $300 million is Hong Kong then was about how much U.S.?

A That would have been about 40 million odd number.

Q About $40 million?

A Yeah, 40, 50 million.

Q Okay. And the date of this again is November 1, 1993; correct?

A Correct.

Q Okay. Had you been satisfied by this date as to UIH's ability to come up with the $40 million?

A We still hadn't had clarification, no. We were not satisfied.

Q Okay. Even--even though they'd had an initial public offering?

A Well, the point was, yes, they might have raised a lot of money, but they might have also pledged that money to other projects and we had no details whether they had indeed done so.

APPENDIX DR

Excerpt from Direct Examination of S. Ng

March 25, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 7116:02-7116:16; Transcript 4938:02-4938:16)

Excerpt from Direct Examination of S. Ng

March 25, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 7116:02-7116:16; Transcript 4938:02-4938:16)

Q And, was the bid ultimately approved by the corporation to go ahead on September 30?

A The bid was, but the basis was changed by that time.

Q Okay. And, when you say changed, you mean it--in what sense was it changed?

A The note of the 17th of September envisaged two management groups, two management companies to be formed. By the time of the bid, it had been decided that we wouldn't form these management companies.

Q Instead of the management companies, what was decided?

A We would have straightforward Technical Cooperation Agreements, two of them; one between Wharf Cable and UIH and another one between Wharf Cable and NYNEX. The investor group would remain as 100 per cent owned by Wharf Communications.

APPENDIX DS

Excerpt from Direct Examination of S. Ng
March 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7223-7224; Transcript 5045-5046)

Excerpt from Direct Examination of S. Ng
March 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7223-7224; Transcript 5045-5046)

the presence of the jury?

THE COURT: That's why we do it outside--that's why we had this argument now, yeah.

(10: 20 a.m. - Recess accordingly.)

(At 10: 45 a.m. on March 26, 1997, with counsel for the parties present, and with the jury present, the following proceedings were had:)

THE COURT: Okay, go ahead, please.

MR. JENTES: Yes.

DIRECT EXAMINATION BY MR. JENTES RESUMES:

Q Mr. Ng, you've actually testified twice here before this jury, once when excerpts were shown from your so-called depovision, and now most recently, for the last little over a day, when you've actually been here in court. And I'd like to ask you if you would explain to the jury what you did to prepare yourself to testify here in court this time.

A The jury will have noticed that I've been spending a fair amount of time in this courtroom following the case, listening to testimonies from various witnesses, Mr. Mark Schneider, Mr. Elsner, Mr. Woo, Mr. Emil Fung. And listening to their testimonies and reading the documents and being away from the office in Hong Kong and being in this courtroom has enabled me to really concentrate on the issues. And it's a little

bit like going back to maybe a high school or college reunion and then your classmates show you photographs, they

talk about this field trip you made to Yellowstone Park way back when. And in that process, the - - the events that happened in the time frame of 1991, 2, 3 and 4 began to come back to me. So that is how I have been doing most of my preparation, by following the case in this courtroom, by reading documents,and be reliving, so to speak, the experience of those years.

Q You gave your deposition back in July of 1995, correct?

A In the middle of 1995.

Q Yeah. What did you do to get yourself ready for the deposition?

A Not very much. And with hindsight, that was unfortunate. That was coming at a time when I wasn't able to concentrate on the case at all. Wharf Cable was just launching--relaunching its--with this new marketing launch that the jury heard about from Ms. Fung, the six news channels, six movie channels, and so on. And our telephone company, New T&T, our telephone company, was in the final stages of negotiating its license, getting ready to launch service, as Hong Kong Telecom's monopoly was expiring on the June 30th, 1995. And coupled with the very bad cold I had at the time, I really had very little time and ability to concentrate on preparing for the case. And I should have better prepared myself for it because that was really the first time I've ever been--this is really the first time I've